

August 1993

MULTIPLE AWARD
SCHEDULE
CONTRACTING

Changes Needed in
Negotiation Objectives
and Data Requirements



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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-253013

August 25, 1993

The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

Dear Mr. Chairman:

This report responds to your request that we examine the efficiency and effectiveness of the General Services Administration's (GSA) multiple award schedule program. The primary objectives of our review were to determine (1) whether multiple award schedule prices for selected items were reasonable, (2) what GSA's negotiation objectives should be, and (3) what data offerors should be required to provide to allow GSA to judge whether prices are reasonable.

The report contains recommendations to the GSA Administrator that we believe can improve prices, clarify GSA's negotiation objectives and data requirements, and improve the efficiency and effectiveness of the multiple award schedule program.

We plan no further distribution of this report until 30 days from its issue date, unless you publicly release its contents earlier. After 30 days, we will send copies to the House Committee on Government Operations, other congressional committees, the GSA Administrator, and other interested parties. We will also make copies available to others on request.

This report was prepared under the direction of J. William Gadsby, Director, Government Business Operations Issues, who may be reached on (202) 512-8387 if you have any questions. The major contributors to this report are listed in appendix IV.

Sincerely yours,

Johnny C. Finch
Assistant Comptroller General

Executive Summary

Purpose

Federal agencies buy billions of dollars worth of goods and services each year through the General Services Administration's (GSA) multiple award schedule (MAS) program. Therefore, it is important that GSA negotiate good prices for those products from MAS vendors.

Because of concerns about GSA's pricing demands (negotiation objectives) and data requirements, the Chairman of the Senate Governmental Affairs Committee asked GAO to examine the efficiency and effectiveness of the MAS program. The primary objectives of this report were to determine (1) whether MAS prices for selected items were reasonable, (2) what GSA's MAS negotiation objectives should be, and (3) what data MAS offerors should be required to provide to allow GSA to judge whether prices are reasonable.

Background

The MAS program is the primary method by which GSA helps federal agencies buy commercial goods and services. In fiscal year 1992, agencies bought more than \$4.2 billion worth of items through the MAS program, with products ranging from desks and paper to mainframe computers and scientific equipment. GSA negotiates and awards contracts to multiple suppliers of similar items. Federal agencies order products through the MAS program at prenegotiated prices and pay vendors directly for their purchases. Compared to traditional procurement procedures, the MAS program is a simplified method for individual federal agencies to buy relatively small quantities of commercial items while securing the benefits of the government's aggregate purchasing volume.

The MAS policy statement says the government's negotiation objective is an offeror's most favored customer discount. To achieve that objective, GSA requires offerors to disclose the best discounts they give to their other customers. GSA also requires some manufacturers who are not direct MAS contractors to provide discount information.

GAO asked GSA officials, contracting officers, and vendor representatives about MAS negotiation objectives, data requirements, and other issues. GAO also reviewed 17 contract files to further understand these issues. GAO compared MAS prices for 25 top-selling items to state and commercial prices for those items. The results of the contract file reviews and price comparisons cannot be extrapolated to all contracts or MAS items.

Results in Brief

MAS prices for some top-selling items were higher than prices offered to the general public or to some state governments. In some cases, this

situation occurred because the MAS dealer paid the manufacturer more than non-MAS dealers did for the same products. GAO believes the MAS policy statement is ambiguous as to whether GSA can consider the discounts offerors give to dealers, distributors, and original equipment manufacturers when GSA sets the government's negotiation objective. GSA contracting staff sometimes used these customers' discounts and sometimes did not. GAO believes that GSA should consider the discounts offerors give to all types of customers but must take into account differences in terms and conditions between the MAS program and other customers.

GSA needs information from MAS offerors to determine the reasonableness of their prices. GAO believes MAS data requirements should be clear, consistent with the negotiation objectives, and the minimum necessary to establish price reasonableness. GSA should be able to obtain data from manufacturers to establish the reasonableness of certain dealers' prices.

GAO's Analysis

Price Comparison

GAO found that about half of the top-selling MAS items it examined were less expensive when offered to the general public or certain state governments than they were through the MAS program. The lowest state price was lower than the MAS price for all five of the computer software items examined. Vendors and GSA officials disagreed about whether MAS prices were higher because of differences in terms and conditions. In several of the states GAO reviewed, the states' prices were lower than MAS prices for computer software because the states' dealers paid the manufacturers less than the principal MAS dealer paid the manufacturer for the same products. (See ch. 2.)

Negotiation Objectives

MAS vendors said the government should not negotiate for the usually higher discounts they give to dealers, distributors, and original equipment manufacturers. Conversely, GSA said that these customers' discounts are legitimate negotiation targets. The MAS policy statement is ambiguous in this regard; it both requires and excludes the use of these discounts. GSA contracting staff sometimes use these customers' discounts to establish the government's MAS negotiation objective. Therefore, excluding them

from consideration in the price analysis could result in higher prices for some items.

Vendors said GSA does not give adequate consideration to differences in terms and conditions between the government and their best customers. However, in the 17 contract files GAO reviewed, GSA staff typically took into account differences in terms and conditions. In many cases, GSA staff concluded that the differences in terms and conditions claimed by vendors did not exist.

Vendors also claimed that GSA's negotiation objective is inconsistently applied. In the contracts GAO reviewed, some GSA contracting staff considered all of the vendors' discounts to other customers while others eliminated some of the vendors' best discounts from consideration. Several of the contracts in which the best discounts were not considered were worth hundreds of millions of dollars. (See ch. 3.)

Data Requirements

MAS vendors said that the MAS program's data requirements are unnecessary and unclear and place an unreasonable burden on them. GSA officials and contracting staff said the data requirements are necessary to determine price reasonableness but conceded some reduction in the requirements was possible. GAO determined that at least some private sector firms also obtain cost or discount data from their vendors to determine price reasonableness. GSA contracting staff and auditors frequently concluded that the discount information offerors submitted was incomplete or inaccurate. MAS vendors participating in a GSA pilot test of new data requirements believed the new requirements were an improvement. GAO believes other changes are also possible, such as relaxing data requirements on all vendors except the relatively few vendors with the largest MAS sales.

Vendors said GSA should not require manufacturers to provide information on their discount and marketing practices when their products are offered to the government by dealers. GSA said it needs this information to determine the reasonableness of dealers' prices. GAO believes that GSA should be able to obtain discount information from manufacturers when products are offered to the government by dealers who cannot provide GSA the information it needs to ensure price reasonableness. However, GSA generally should not need to obtain data from manufacturers when products are offered by dealers who can provide that information. (See ch. 4.)

Recommendations

GAO recommends that the GSA Administrator (1) periodically monitor state and commercial prices for top-selling MAS products to ensure that MAS prices are not higher than other customers' prices with similar terms and conditions; (2) examine the relevance of MAS terms and conditions; (3) amend MAS policies to ensure that GSA will not award a contract when available information indicates that a prospective MAS dealer is paying more than non-MAS dealers for the same products unless the MAS dealer's proposed price to the government is less than or equal to other dealers' prices to comparable customers; (4) 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 but that GSA must consider legitimate differences in terms and conditions identified and valued by the offeror when negotiating the government's discount; (5) ensure that MAS negotiation procedures are consistently implemented; (6) test alternative MAS data requirements to ensure that the requirements are clear, reasonable, and the minimum necessary to establish price reasonableness; and (7) amend MAS policies to recognize that contracting officers may need to obtain data from manufacturers when products are offered to the government by dealers who cannot provide information needed to ensure price reasonableness. (See recommendations at the end of chs. 2 through 4.)

Agency and Vendor Comments

GSA agreed with GAO's factual findings and said it will use the information developed by GAO to improve the MAS program. However, GSA did not comment on GAO's conclusions and recommendations because the Administrator designate was not on board and had not reviewed the report. (See app. III.)

MAS vendors generally did not agree with GAO's conclusions and recommendations. They believe GSA should not negotiate for the discounts certain customers receive because the government is not like these customers. They also said they could not place a value on all of the differences in terms and conditions that exist between the government and their best customers. The vendors said GSA already has sufficient information and does not need manufacturer data to establish the reasonableness of MAS dealers' prices.

GAO believes that the discounts vendors give to certain customers should not be considered off limits simply because the government is not like these customers. If differences in terms and conditions are considered, any differences between the government and these customers should be

taken into account. The value of certain terms and conditions is a legitimate subject for negotiation. GAO believes GSA may not be able to establish the reasonableness of certain dealers' prices without manufacturer data because those dealers do not have pricing data for comparable nonfederal customers.

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Abbreviations

DSMD	Discount Schedule and Marketing Data
FSS	Federal Supply Service
GSA	General Services Administration
IRMS	Information Resources Management Service
MAS	multiple award schedule
MFC	most favored customer
OEM	original equipment manufacturer
OIG	Office of the Inspector General
OMB	Office of Management and Budget

Introduction

The General Services Administration (GSA) was established in 1949 to give the federal government a more efficient and economical system for procuring and supplying personal property and nonpersonal services. GSA manages three programs to provide goods and services to federal agencies—special order, stock, and schedules. In the special order program, agencies order items from GSA; GSA places the agencies' orders with contractors; and the contractors deliver the items to the agencies. In the stock program, GSA orders items from contractors who deliver the items to GSA's warehouses. Agencies order the items from GSA and receive the items from the warehouses.¹ In the schedules program, agencies place orders directly with GSA-approved contractors, who deliver the items directly to the agencies.

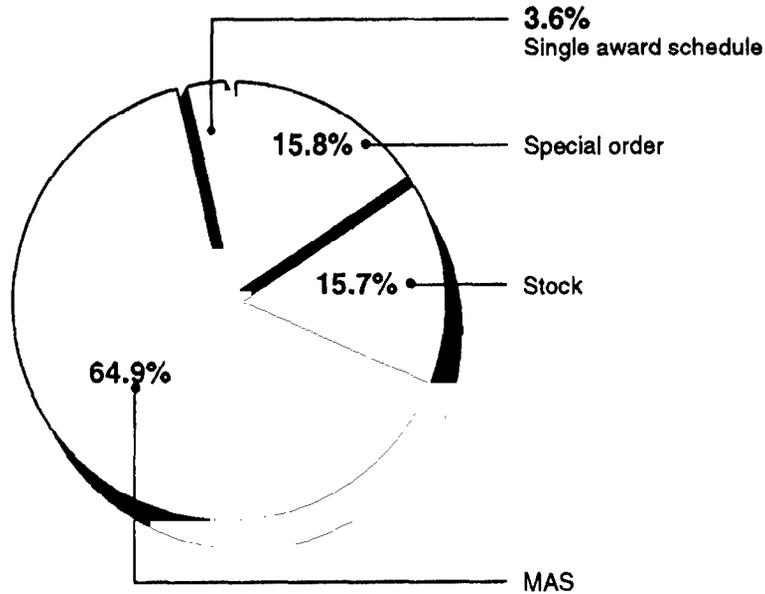
Schedules program products are available on either single award schedules or multiple award schedules (MAS), depending on the commodity. Single award schedules consist of contracts with one supplier for the delivery of a particular product or service at a stated price to a specified geographic area. Prospective vendors compete to provide the product or service, normally at the lowest price. A single award procurement is appropriate if there are adequate commercial descriptions or specifications to permit competitive offers.

The MAS program consists of contracts awarded to more than one supplier for comparable (but not necessarily identical) commercial supplies or services at varying prices for delivery within the same geographic area. MAS procurement is appropriate when (1) it is not practical to draft commercial descriptions or specifications and several suppliers are able to furnish similar commercial supplies or services or (2) agencies have varying needs and product selectivity is necessary.

As figure 1.1 shows, the MAS program was GSA's largest program for providing goods and services to federal agencies in fiscal year 1992, accounting for nearly two-thirds of the approximately \$6.5 billion in agency purchases of products bought through stock, special order, and schedules programs.

¹For an analysis of the stock program, see General Services Administration: Increased Direct Delivery of Supplies Could Save Millions (GAO/GGD-93-32, Dec. 28, 1992).

Figure 1.1: Nearly Two-Thirds of the Value of Agency Purchases in GSA-Supported Programs Were Made Through the MAS Program in FY 1992



Source: GSA.

Overview of the MAS Program

Begun at GSA in the 1950s, the MAS program has provided federal agencies with a simplified method of acquiring small, repetitive quantities of common-use, commercial items, ranging from paper and furniture to mainframe computers and complex laboratory equipment. Compared to traditional procurement methods, the MAS program provides several advantages to both federal agencies and vendors. Agencies can order small quantities of commonly used goods and services without using the cumbersome and administratively costly traditional procurement process. Also, agencies know that GSA is responsible for ensuring that all procurement regulations have been followed in making items available through the MAS program. Finally, MAS prices should reflect the government's aggregate buying power.

Vendors get their commercial products exposed to a large number of potential federal customers who must use either the schedules or stock program before considering commercial sources. Also, the vendors

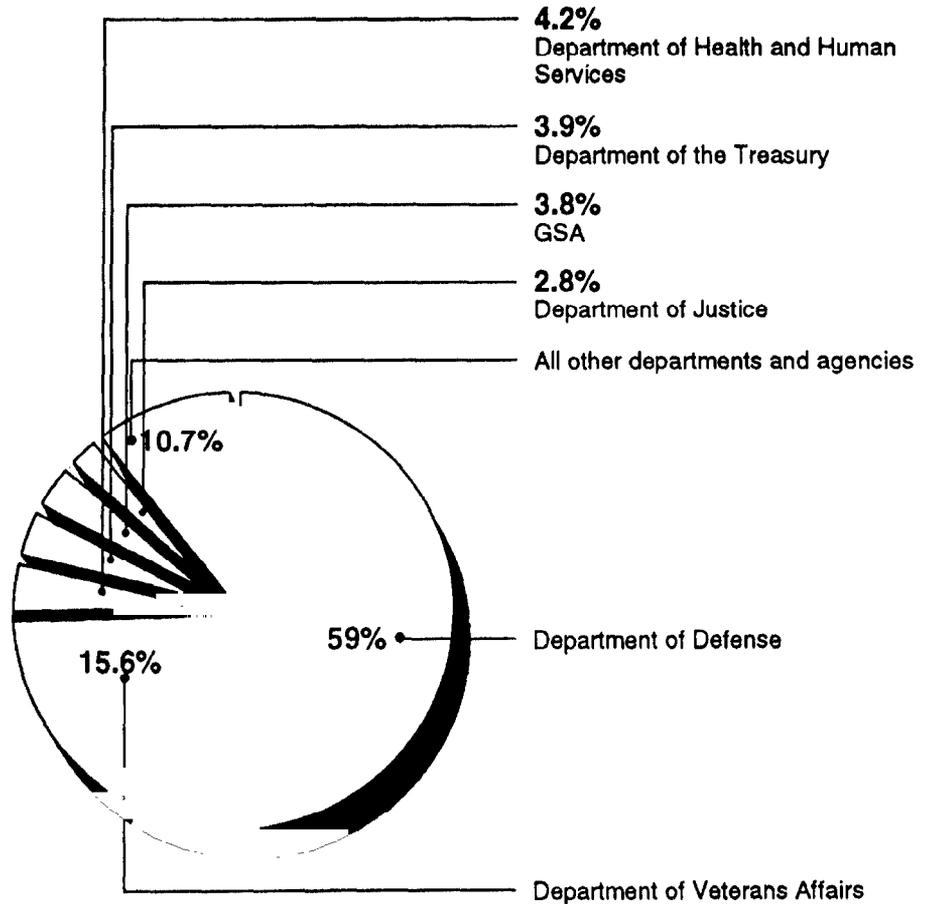
expend less effort to sell products to federal agencies than if there were no MAS program.²

Although most agencies buy products through MAS, six of them accounted for 89 percent of the value of MAS orders over \$25,000 in fiscal year 1992.³ As figure 1.2 shows, the Department of Defense was by far the largest customer, accounting for nearly 60 percent of the value of such orders.

²The reduced administrative burden of the schedules on vendors was illustrated in 1987, when the Department of Defense provided its contracting officers with more flexibility in choosing to use the Federal Supply Schedules. The Office of Management and Budget said that this change would reduce vendors' paperwork burden by more than 2 million hours per year.

³GSA did not have complete agency-by-agency data on purchases of less than \$25,000.

Figure 1.2: The Department of Defense Accounted for Most of the Value of MAS Orders of More Than \$25,000 in FY 1992



Source: GSA.

GSA issues MAS solicitations, receives offers from prospective vendors, negotiates with them on product and service prices as well as terms and conditions of sale, and awards the contracts.⁴ MAS contracts are indefinite-delivery contracts that give vendors the right to sell goods and services to the government. They do not, however, guarantee a minimum quantity of sales.

⁴Terms and conditions of sale can include such factors as delivery requirements, warranty requirements, timing of price increases, and functions performed for the government by the vendor.

Federal agencies order products and services directly from a supplier and pay the supplier directly. Because each MAS schedule contains different versions of the same type of product (e.g., several different models of computers), agencies can select items with the features that they need.⁵

A large number of manufacturers' products are offered to federal agencies through the MAS program. For example, as of November 1992, the microcomputer, software, and peripheral products MAS schedule contained products from 154 microcomputer manufacturers, 464 microcomputer software manufacturers, and 627 peripheral products manufacturers. Federal agencies also have a range of products from which to choose on the schedules. For example, a federal agency wanting to buy a 386 computer through the schedules in early 1993 could choose from over 2,000 products. An agency wanting to buy a laser printer for that computer had over 1,000 products from which to choose.

MAS Policy Statement

In November 1982, GSA published a policy statement to (1) articulate the policies and procedures GSA would follow in the MAS program and (2) correct a number of deficiencies we had identified in previous reports.⁶ (See app. I for a description of some of those reports.) The policy statement established the government's negotiation position and provides guidance to GSA contracting personnel who negotiate MAS contracts. It also identified the sales and marketing data that prospective vendors must provide when responding to MAS solicitations. The MAS policy statement has not been changed since it was issued in 1982. It remains GSA's primary guidance on MAS operations.

MAS Program Administration

The MAS program is administered by two GSA components. The Federal Supply Service (FSS) negotiates and awards the contracts for most products and services. In fiscal year 1992, FSS had 5,595 active contracts with total sales of more than \$2.3 billion.⁷ The Information Resources Management Service (IRMS) negotiates and awards contracts for automated data processing and telecommunications products and

⁵Hereafter, when the term "schedules" is used it refers to the multiple award schedules.

⁶The MAS policy statement was published at 47 Federal Register 50242 (1982). The policy statement was effective with solicitations issued on or after October 1, 1982.

⁷All sales figures are as reported by the vendors. GSA does not have independent information on MAS sales by vendors. Because most FSS contracts are for more than 1 year, the number and dollar value of the contracts awarded in any given year are only a portion of the total number of active contracts. Sales figures reported include all active contracts in that year.

services. In fiscal year 1992, IRMS had 1,016 active contracts, with total sales of nearly \$1.9 billion. In total, GSA's fiscal year 1992 MAS program involved 6,611 contracts and annual sales of more than \$4.2 billion.

Although both organizations are governed by the MAS policy statement, the IRMS and FSS programs have somewhat different characteristics. IRMS contracts are for 1 year, whereas FSS contracts are commonly for more than 1 year. Annual sales through individual IRMS contracts are often larger, but there are more FSS contracts and schedules. In IRMS, several vendors can sell the same item through the schedules at different prices. In FSS, two or more offerors of the same item must compete, and only one will get to sell that item through the schedules.⁸ All IRMS contract negotiations and awards are done in Washington, D.C. FSS contract negotiation is more decentralized, with about half of all contracts negotiated and awarded by regional offices in Fort Worth, TX; New York, NY; Kansas City, MO; and Auburn, WA.⁹

The Negotiation Process

MAS contract negotiations in both FSS and IRMS essentially occur in the following four steps: (1) analysis of offers, (2) establishment of the negotiation objectives, (3) negotiations, and (4) preparation of the price negotiation memorandum. All MAS solicitations contain a section of inquiries called the Discount Schedule and Marketing Data (DSMD). MAS offerors are required to provide GSA contracting officers with information in the DSMD on their best discounts within certain categories of customers and sales information on top-selling items within product or service groupings. The contracting officer uses this information to determine whether the prices offered by potential contractors are "fair and reasonable"—the pricing objective in all federal contracts.

Before the negotiations, GSA contracting officers are to establish specific negotiation objectives based on their price analysis and document those objectives in a prenegotiation memorandum.¹⁰ The MAS policy statement says that the government's goal is to obtain the offeror's most favored customer (MFC) discount. GSA uses this MFC negotiation goal in its attempt

⁸In this report, an "offeror" is a prospective vendor who responds to a solicitation. An offeror becomes a "vendor" when a contract is awarded.

⁹In fiscal year 1992, for example, 2,710 of the 5,595 contracts awarded in FSS were awarded by regional office staff. However, nearly \$1.8 billion of the \$2.3 billion in sales were in contracts awarded by headquarters staff.

¹⁰In this report, the term "negotiation objective" means the goal GSA establishes going into MAS negotiations. It does not mean the price GSA should accept at the conclusion of the negotiations.

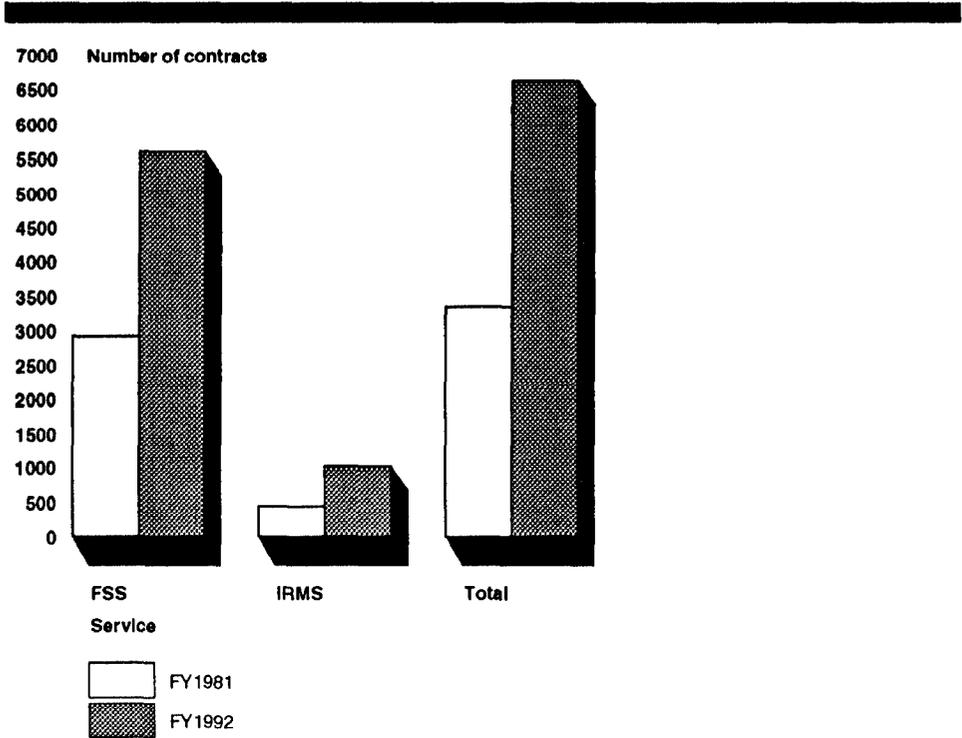
to achieve fair and reasonable pricing in the MAS program. The contracting officer then is supposed to meet with prospective vendors and attempt to reach an agreement on the price for the product. At the end of negotiations, the contracting officer is to prepare a price negotiation memorandum that summarizes the principal elements of the negotiations. The proposed contract should then be reviewed within GSA to ensure that it conforms to applicable laws, regulations, established policies and procedures, and sound business judgment.

Changes in MAS Program Activity Over Time

The schedules program has grown substantially in the past decade. As figure 1.3 shows, the total number of MAS contracts increased from 3,350 in fiscal year 1981 to more than 6,600 in fiscal year 1992, with increases occurring in both FSS and IRMS. As figure 1.4 shows, sales of MAS products more than doubled during this period in FSS, IRMS, and overall.¹¹

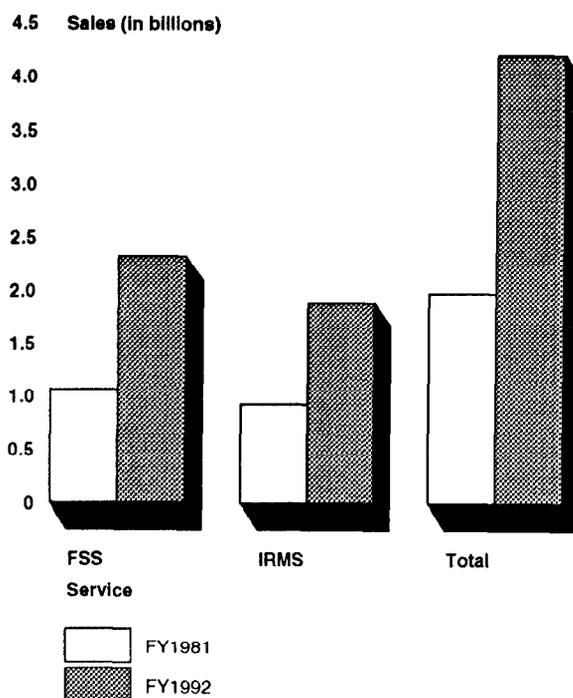
¹¹MAS sales figures over time are not adjusted for inflation.

Figure 1.3: The Number of MAS Contracts Increased Substantially From FY 1981 Through FY 1992



Source: GSA.

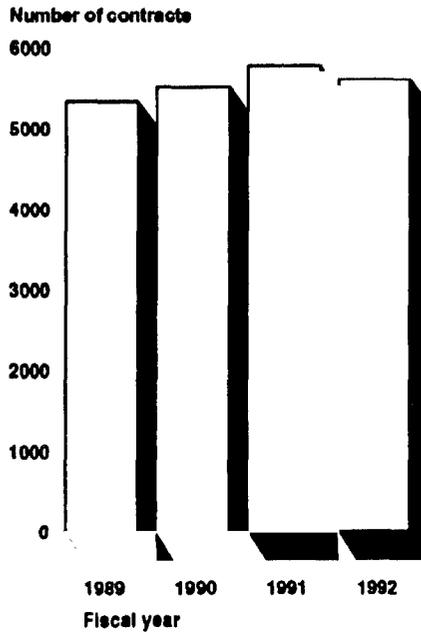
Figure 1.4: MAS Sales Increased Substantially From FY 1981 Through FY 1992



Source: GSA.

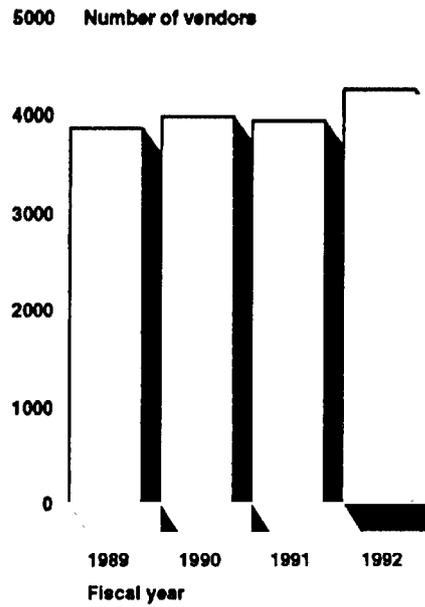
Some variations in these long-term trends are apparent when the level of activity is examined in each of 4 recent years within each service. As figures 1.5 and 1.6 show, the number of FSS contracts and vendors increased somewhat from fiscal year 1989 through fiscal year 1992. However, as figure 1.7 shows, the number of offers received each year fluctuated somewhat during this period. This fluctuation probably occurred because FSS contracts are for more than 1 year and draw a different number of offers each year depending on which contracts are up for renewal.

Figure 1.5: The Number of FSS
Contracts Increased Somewhat From
FY 1989 Through FY 1992



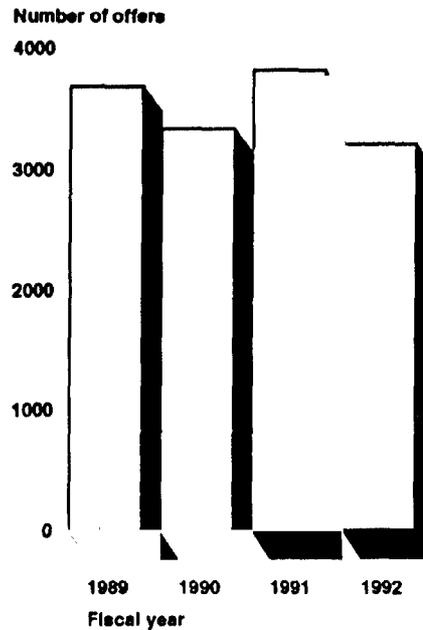
Source: GSA.

Figure 1.6: The Number of FSS Vendors Increased Somewhat From FY 1989 Through FY 1992



Source: GSA.

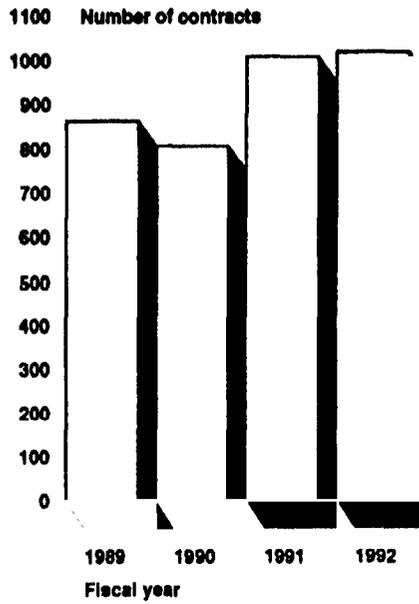
Figure 1.7: The Number of FSS Offers Fluctuated From FY 1989 Through FY 1992



Source: GSA.

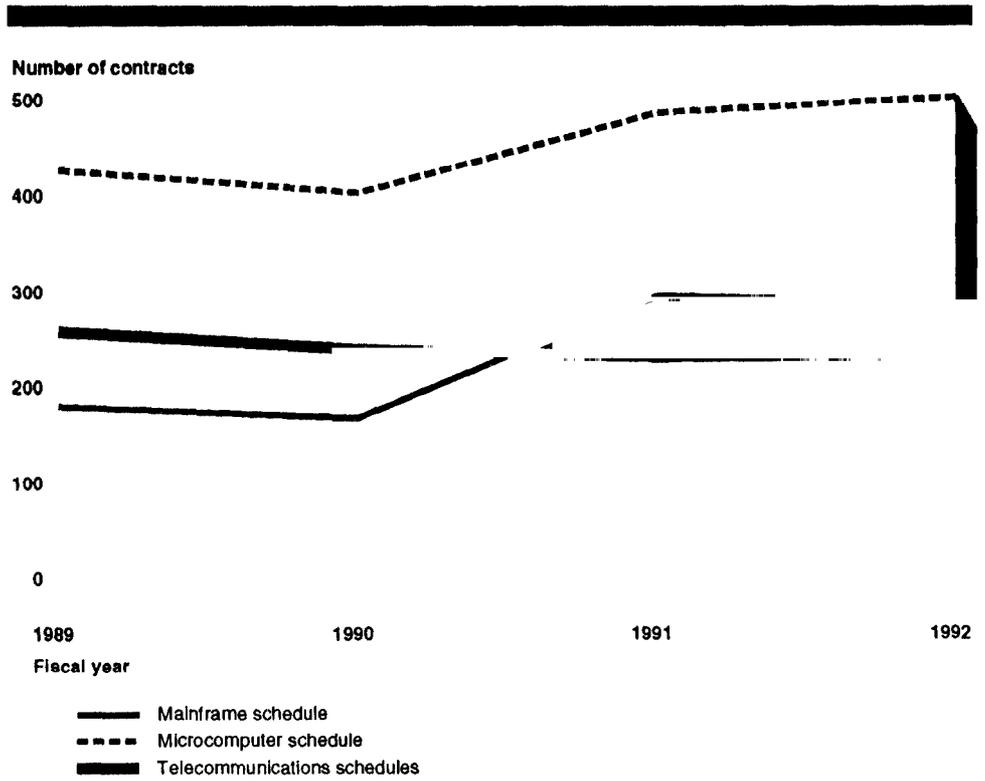
In IRMS, as figure 1.8 shows, the number of MAS contracts increased in fiscal years 1991 and 1992 from the previous 2 fiscal years. As figure 1.9 shows, the increases were driven by growth in the number of mainframe and microcomputer contracts. However, as figure 1.10 shows, while the number of contracts increased during this period, the number of offers received each year declined. IRMS officials said this decline was partially due to the transfer of certain items from the telecommunications schedules to FSS during this period. They also said the decline was due to the increased number of dealers on the schedules representing multiple manufacturers who, in the past, represented themselves. However, they said the decline in offers will have ended when all of the fiscal year 1993 data are available. For example, the number of offers on the microcomputer schedule increased from 635 in 1992 to 728 for the 1993 to 1994 contract cycle.

Figure 1.8: The Number of IRMS
Contracts Increased From FY 1989
Through FY 1992



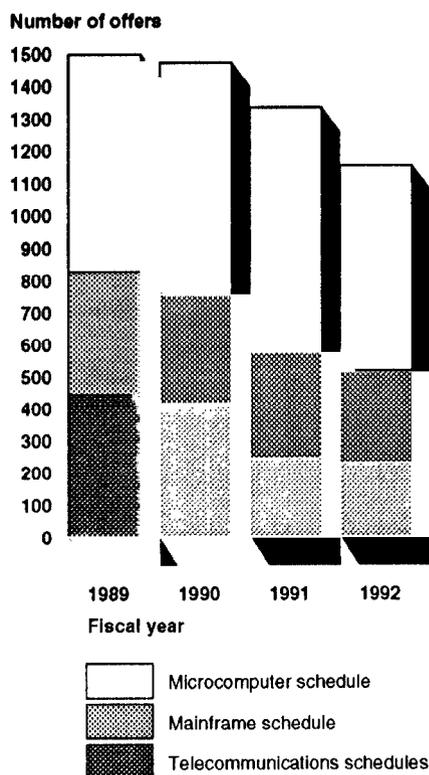
Source: GSA.

Figure 1.9: The Number of IRMS Contracts Increased in the Mainframe and Microcomputer Schedules From FY 1989 Through FY 1992



Source: GSA.

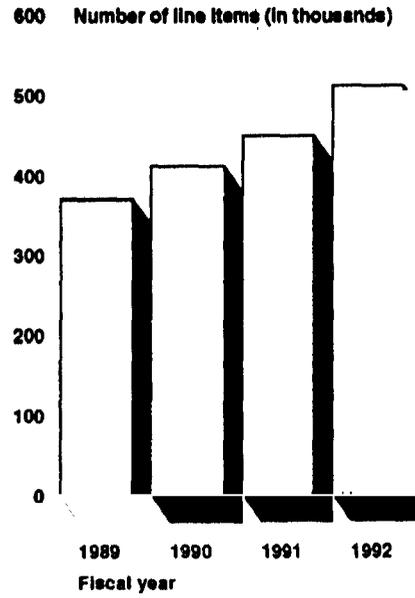
Figure 1.10: The Number of IRMS Offers Declined From FY 1989 Through FY 1992



Source: GSA.

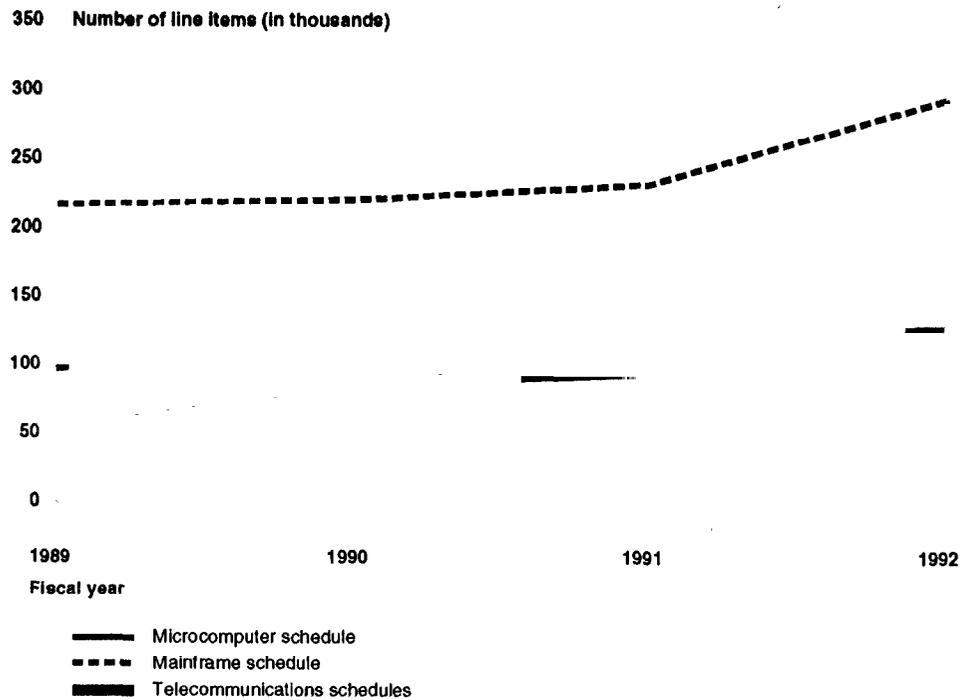
Another way to view the level of activity within the schedules program is the number of line items offered. The number of line items is the total number of prices on the schedule and therefore reflects both the number of vendors and the number of products offered. As figure 1.11 shows, the number of line items in IRMS has increased steadily from fiscal year 1989 through fiscal year 1992. This increase occurred in all of the schedules but was most pronounced in the mainframe schedule, as shown in figure 1.12. FSS does not keep data on the number of line items on its schedules but estimated that over 1.5 million items were on the schedules in fiscal year 1992.

Figure 1.11: The Number of IRMS Line Items Grew From FY 1989 Through FY 1992



Source: GSA.

Figure 1.12: The Number of IRMS Line Items Grew in All of the Schedules From FY 1989 Through FY 1992



Source: GSA.

Objectives, Scope, and Methodology

On July 30, 1992, the Chairman of the Senate Governmental Affairs Committee asked us to review the efficiency and effectiveness of the MAS program. The Chairman cited concerns that had been expressed regarding MAS negotiation objectives and data requirements and requested that we provide the Committee with our views regarding how the program was operating. The primary objectives of our review were to determine (1) the reasonableness of MAS prices for selected items, (2) what should be GSA's MAS negotiation objectives, and (3) what data GSA should require MAS offerors to provide in order for GSA to judge whether prices are reasonable.

To accomplish these objectives, we first interviewed a number of individuals and organizations involved in the administration of or affected by the MAS program. Those interviewed included GSA officials, officials from GSA's Office of the Inspector General (OIG), and representatives of

vendor associations. We asked those interviewed their views regarding the MAS program's negotiation objectives, data requirements, and other issues.

We then held focus group discussions with MAS contracting personnel from FSS headquarters offices, one FSS regional office, and IRMS. We asked contracting officers, price analysts, and others how they negotiated MAS contracts and their opinions on MAS policies, data requirements, and other issues.

We reviewed documentation for 17 MAS contracts in both FSS and IRMS to determine how those contracts were negotiated. The contracts were judgmentally selected from each location where the focus groups were held. Contract documentation we examined included prenegotiation memos, price negotiation memos, DSMD sheets, recommendations for award, and preaward audit reports. After reviewing the documentation, we interviewed some of the contracting personnel who worked on those contracts to determine more clearly how they were negotiated and to inquire why certain steps were taken. In both the contract reviews and the interviews, we attempted to identify the government's negotiation objective, the discounts that were negotiated, and how federal/nonfederal differences in terms and conditions were considered by GSA contracting personnel.

To assess the reasonableness of MAS prices, we compared the prices of frequently purchased items on the FSS and IRMS schedules to commercial prices and prices paid by certain state governments for the same items from October through December 1992. GSA officials selected the items we focused on based on what they believed to be the top-selling MAS items. We determined commercial prices for the GSA-selected items by contacting non-MAS vendors and asking their prices to the general public for those items.

To understand trends in MAS procurement, we obtained data from FSS and IRMS on MAS program activity in recent years. The data we obtained included information on the number of vendors in the program, the number of offers received in response to solicitations, the number of active contracts, and total sales under the MAS program. Some of the data covered more than 10 years of program activity; other data focused on more recent periods.

Some of the methodologies that we employed did not permit us to extrapolate our findings to the entire MAS program. For example, we did

not select and review a random sample of all MAS contracts, so we could not speak about all such contracts. To have done so, we would have had to review several hundred contracts maintained at multiple locations throughout the country. However, the contracts that we did review provided insights into how MAS contracts are negotiated, what negotiation objectives are established, and what data are needed to negotiate the contracts. Also, the sheer size of the contracts reviewed makes even small changes in product prices important. Some of the contracts had estimated values of hundreds of millions of dollars. The total estimated value of the 17 contracts we reviewed was more than \$2.5 billion.¹²

There are no generally agreed upon criteria for what constitutes "appropriate" MAS negotiating objectives or data requirements. Our conclusions and recommendations regarding these issues are based on our work in this review and prior studies of the MAS program. We did not validate the information we obtained from GSA regarding the number of MAS contracts, offers, or vendors or MAS sales figures. Our work was done from August 1992 through May 1993 in accordance with generally accepted government auditing standards. We present a more complete statement of our objectives, scope, and methodology in appendix II.

GSA officials provided oral and written comments on a draft of this report, and we have incorporated their comments where appropriate. A copy of their written comments is included in appendix III of this report. We also discussed our tentative conclusions and recommendations with representatives of vendor associations, and their comments have also been incorporated where appropriate. Vendor associations we met with included the Coalition for Government Procurement, the Computer and Business Equipment Manufacturers Association, the Association for Information and Image Management, the Computer and Communications Industry Association, the Information Technology Association of America, and the Software Publishers Association. We summarize and discuss the views of both GSA and the vendors regarding our conclusions and recommendations at the end of chapters 2 through 4.

¹²Some of the contracts were multiyear contracts. The dollar figures reported here are for the terms of the contracts; they are not annual figures.

MAS Prices Were Higher Than Commercial or State Prices for Some Items

MAS prices we reviewed for some top-selling items were higher than non-MAS prices available to the general public and certain state governments. Some of the MAS price disadvantage may be due to differences in terms and conditions of sale between the MAS program and these other customers. However, much of the MAS price disadvantage appeared to be due to the fact that manufacturers charged MAS dealers higher prices than dealers selling the same products to state governments.

Prior Studies Often Indicated MAS Prices Were Not Competitive

Several previous studies of the schedules program showed that MAS prices were not as low as the prices paid by other customers. For example, in a 1977 report, we noted that some MAS contractors charged the federal government more for their products than they charged commercial customers.¹ This situation occurred because FSS did not have procedures for considering the total purchases expected under a contract when evaluating the prospective contractors' offers and negotiating contract prices. As a result, the government did not receive volume discounts that other customers received under aggregate purchase agreements, original equipment manufacturer (OEM) agreements, and other large quantity orders.² Similarly, in our 1979 report on the MAS program, we concluded that

"the U.S. [g]overnment sometimes pays more for identical items—and gets less favorable warranty and payment terms—than other purchasers. In some instances, items are sold to the general public at lower prices than those available to the [g]overnment."³

In 1978, the *Washington Post* reported that MAS prices for certain items were up to 33 percent higher than the prices paid by state governments and customers of Washington-area discount stores.⁴ Items used in the comparison included typewriters, electronic calculators, cameras, tape recorders, and televisions.

More recently, postaward audits by GSA's OIG have also indicated that MAS prices could be improved. According to a June 1992 OIG report, over

¹Federal Supply Service Not Buying Goods at Lowest Possible Prices (GAO/PSAD-77-69, Mar. 4, 1977).

²An OEM is a supplier that manufactures and markets its own line of products, obtains components to be integrated into a system from other suppliers, or has a product or products manufactured by another company to be sold under the supplier's own label.

³Ineffective Management of GSA's Multiple Award Schedule Program: A Costly, Serious, and Longstanding Problem (GAO/PSAD-79-71, May 2, 1979), p. i.

⁴Ronald Kessler, "GSA Purchasing Practice: No Bidding, Higher Prices," *Washington Post*, August 25, 1978, pp. A1, A9.

65 percent of the 42 postaward audit reports issued to contracting officials in fiscal year 1991 contained recommendations for refunds because of contractor overbillings, pricing errors, and discounts not received.⁵ Identified defective pricing and price reduction recoveries from these reports totaled approximately \$8.8 million. Another 21 reports concerning defective pricing were sent to the OIG's Office of Investigations, with recommended recoveries of \$28.5 million. GSA audits also reported billing errors with a "substantial number of contractors" that had not been detected. Because of these and other problems, the OIG concluded that the MAS program should continue to be recognized as a high-risk area for Federal Managers' Financial Integrity Act purposes.

On the other hand, two studies by the Department of Defense OIG showed that MAS prices were better than those that could be obtained through other means. A 1986 OIG report showed that the government could have gotten about 15-percent better pricing by purchasing electronic test equipment through the schedules instead of through small purchase and regular contracting procedures.⁶ A 1991 OIG report said that the government could have saved over 24 percent by buying certain medical items from the schedules instead of using small purchase procedures.⁷

Comparison of MAS Prices With Prices to General Public and States

To test the competitiveness of MAS prices, we compared the prices of 25 popular MAS products to the prices available to the general public and certain state governments. At our request, GSA officials identified what they believed were the top-selling MAS items—10 from IRMS and 15 from FSS. We identified the MAS vendors and determined the MAS prices that were in effect from October through December 1992. If more than one IRMS vendor sold an item and the vendors' prices varied, we used the lowest price offered.⁸

We first compared MAS prices for the items with the prices available to the general public from non-MAS commercial vendors. We judgmentally selected non-MAS vendors by reviewing telephone or dealer/distributor

⁵GSA OIG, *Audit Highlights of GSA's Services and Staff Offices Reviewed in Fiscal Year 1991*, June 30, 1992, pp. 58-61.

⁶Department of Defense, OIG, "Procurement of Repairable Items Used by More Than One Service," report number 86-067, February 18, 1986.

⁷Department of Defense, OIG, "Procurement of Medical Materiel and Equipment," report number 91-085, May 30, 1991.

⁸This situation occurred only in IRMS because FSS does not allow more than one vendor to carry the same item. If FSS receives more than one offer to sell the same item, vendors must compete for the right to sell the item through the MAS program.

listings of businesses selling those types of items and by examining product-related periodicals and advertisements. The prices we obtained from the vendors represented their regular (nonsale) prices for a single item (e.g., a single copier or a single software package) during the October through December 1992 time frame. We then compared MAS prices to the prices paid for the same items by certain state governments. Again, the prices reflected the purchase price for one of each item during the October through December 1992 time frame. We judgmentally selected states based on geographic dispersion, size, and their ability to provide price and other information in a timely manner. We did not report price comparisons for any of the top-selling items that were not sold by at least two non-MAS commercial vendors or bought by at least two state governments because we believed that the data were insufficient to make those comparisons meaningful.⁹

IRMS Price Comparisons

The results of our price comparisons for the 10 IRMS items are presented in table 2.1. Commercial prices were reportable for eight of the top-selling IRMS items. The MAS price was equal to or lower than the lowest commercial price on five of the eight IRMS items, with the MAS price advantage ranging from 0.0 percent on Microsoft Windows to 6.0 percent on the Hewlett-Packard Apollo 9000 minicomputer. For three of the eight items, the MAS price was higher than the lowest commercial price, with the commercial price advantage ranging from 5.5 percent on Novell Netware to 6.9 percent for WordPerfect.

⁹Fewer than two commercial prices and two state prices were available for the following five FSS items: (1) Kodak analyzer (model E700XR); (2) Xerox 13R9 copier cartridge; (3) Tektronik oscilloscope (model DSA602A); (4) Hewlett-Packard signal analyzer (model 8566B); and (5) Hewlett-Packard signal analyzer (model 8562A).

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MAS Prices Were Higher Than Commercial
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Table 2.1: Comparison of MAS Prices With Commercial and State Prices for IRMS Items

Product	Lowest MAS price	Lowest commercial price	Lowest state price
Borland Quattro Pro spreadsheet for DOS, version 4.0	\$292	\$274	\$244
Lotus 1-2-3 spreadsheet for DOS, version 3.1+	372	375	350
Microsoft Windows, version 3.1	87	87	83
Novell Netware networking program, version 3.11, 5 user	619	585	558
WordPerfect wordprocessing program for DOS, version 5.1	262	244	223
IBM direct access storage device, model 3390-B28	141,048	^a	142,450
Hewlett-Packard Laserjet III Si printer	3,044	3,060	2,888
Hewlett-Packard Apollo 9000 minicomputer, model 720CRX	16,043	17,059	^b
DEC VAX 4000-300 minicomputer, model DV43JT1-A9	65,101	^a	68,367
Sun Micro-systems graphics workstation	11,925	12,236	^b

^aFewer than two non-MAS dealers we contacted sold this item.

^bFewer than two state governments we contacted bought this item.

However, MAS prices were equal to or lower than the states' prices for only two of the eight items we compared. The MAS price advantage was 1.0 percent for the IBM direct access storage device and 4.8 percent for the DEC minicomputer. On the other hand, for six of the eight items, the lowest state price was less than the MAS price. The states' price advantages ranged from 4.6 percent for Microsoft Windows to 16.4 percent for Borland Quattro Pro.

These MAS price disadvantages take on added significance given the government's volume of purchase of some of these items. For example, from April 1992 through March 1993, federal agencies bought nearly 17,000 copies of WordPerfect 5.1 through the MAS program in fiscal year 1992, costing about \$4.3 million. The lowest price for this item (\$223) was offered to the state of Texas. If the MAS price for WordPerfect 5.1 were as

low as the price offered to the state of Texas, federal agencies would have saved nearly \$650,000 on this one item in the 1992 to 1993 contract year.¹⁰

FSS Price Comparisons

We were able to obtain 2 or more commercial prices for only 6 of the 15 FSS items targeted for comparison as shown in table 2.2. For five of the six items, the MAS price was lower than the lowest commercial price, with the MAS price advantage ranging from 5.7 percent for Polaroid Spectra film (1-pack) to 50.0 percent for a Haworth drawer pedestal and a Herman Miller acoustical panel. The largest MAS price advantages were for furniture products. GSA negotiated contracts for these products directly with the manufacturers. We obtained non-MAS commercial prices from furniture dealers.¹¹

The non-MAS commercial price was lower for the Canon 6650 II System B copier. The regular MAS price for this item was \$14,016, but from November 1992 through March 1993, the MAS price was reduced to \$12,012. One of the non-MAS commercial dealers we contacted said its regular price for the copier was \$12,000, but the price until the end of April 1993 was \$9,995. This reduced price was 16.8 percent lower than the MAS price for virtually the same period. The dealer said that it could sell the copier through the MAS contract held by the manufacturer, but if it were to do so, the price would be at the contract price of \$12,012 until the end of March and \$14,016 thereafter.

¹⁰These figures include only sales of WordPerfect 5.1 for DOS with media and full documentation from three vendors. Federal agencies also bought at least 13,500 licenses of WordPerfect 5.1 for DOS without media or documentation between April 1992 and April 1993. The average price for these licenses through the schedules was \$156; the price for these licenses to the state of Texas as of April 1993 was less than \$84. If the MAS price for these licenses was as low as the Texas price, federal agencies would have saved nearly \$1 million during this period.

¹¹The furniture dealers we contacted said their prices were contingent upon many factors, including the quantity purchased, a buyer's desire to bargain with them, and the manufacturers' willingness to give them a "special" price.

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Table 2.2: Comparison of MAS Prices With Commercial and State Prices for FSS Items

Product	Lowest MAS price	Lowest commercial price	Lowest state price
Canon 6650 II copier, purchase ^a			
System B	\$12,012.00	\$9,995.00	\$8,410.00
Nonsystem B	10,380.00	^c	8,470.00
Xerox 1090 copier, monthly rental ^d	6,619.00	^c	6,424.00
Xerox 5052 copier, monthly rental	853.00	^c	513.00
Xerox 5065FIN copier, purchase	18,975.00	^c	20,435.00
Xerox 5090 copier, monthly rental	7,719.00	^c	7,883.00
Polaroid Spectra film:			
1-pack	9.85	10.44	10.44
2-pack	18.80	20.63	19.82
Tektronik oscilloscope, model 2465B	6,072.00	6,495.00	^b
Haworth drawer pedestal, model PDS-24-HNN	167.00	334.00	^b
Herman Miller acoustical panel, model AO884FFLT	123.00	247.00	123.00
Westinghouse cabinet, model CFMAWL 36	181.00	301.00	^b

Note: This table includes only the 10 items—of the 15 top sellers—that were sold by at least 2 non-MAS commercial vendors or bought by at least 2 states.

^aGSA officials identified the Canon 6650 II System B copier as a top-selling item. Most of the states we contacted had purchased the Canon 6650 II without the stapler/sorter feature that makes it a "System B." We therefore presented price information on both variations of this copier.

^bFewer than two state governments we contacted purchased this item.

^cFewer than two non-MAS dealers we contacted sold this item.

^dMonthly rental charges include the base rental charge plus the copy cost calculated from the cost-per-copy charge and the copy volume level used by GSA when making price comparisons.

At least two state governments purchased 7 of the 15 FSS items. MAS prices were equal to or lower than state prices for four of the seven items we compared, with the MAS price advantage ranging from 0.0 percent for the Herman Miller acoustical panel to 7.1 percent for the Xerox 5065FIN copier. State governments' prices were lower on the remaining three items, with the states' price advantage ranging from 2.9 percent for the Xerox 1090 copier to 39.9 percent for the Xerox 5052 copier.

Explanations for Higher MAS Prices

Our analysis of MAS prices and our discussions with GSA officials and vendor representatives suggested the following explanations for higher

MAS prices: (1) differences in the terms and conditions of sale between the MAS program and non-MAS customers and (2) lower prices from the manufacturers to dealers selling to non-MAS customers.

Differences in Terms and Conditions

The terms and conditions of the MAS program (e.g., no quantity commitment, a requirement for the vendor to accept the risk of loss until delivery, multiple ordering and delivery points, a requirement for the vendor to keep prices fixed for a specified period) could make it more expensive to sell to the federal government than to a state government or to the general public. Therefore, differences in terms and conditions could explain some or all of the differences in unit prices between the MAS program and non-MAS buyers. To test this theory, we compared the terms and conditions in the MAS program with those in the state governments' contracts and in the conditions of sale by commercial vendors to the general public.

Overall, we found that the states' terms and conditions were not markedly different from those used in the MAS program.¹² For example, the state of Texas had the lowest price for WordPerfect 5.1—\$39 per copy (about 15 percent) less than the MAS price. According to Texas procurement officials, the state

- did not have to pay extra for delivery of items to state agencies and was not liable for the items until they were delivered,
- had multiple ordering and delivery points for the items within the state,
- did not commit to buy a predetermined amount of the items during the term of the contract (10 months plus a 1-year extension),
- was not required to use only the specified contractor for any purchases made during the contract period, and
- did not permit price increases during the term of the contract but required the dealer to pass along any price reductions it received from the manufacturer of the product.

All of these terms and conditions are essentially the same as those in MAS contracting. However, state officials said that Texas bought substantially

¹²The state of Washington had the lowest prices for three of the IRMS items—Borland Quattro Pro, Microsoft Windows, and Hewlett-Packard Laserjet printer. The state's terms and conditions were different from those in the MAS program. The state conducted weekly competitions for the products, and the lowest bidder won the right to sell to the state for that order. However, other states had prices that were lower than the MAS prices for two of the three items, and their terms and conditions were generally similar to those in the MAS program.

fewer licenses of WordPerfect 5.1 than federal agencies bought.¹³ The similarity in terms and conditions and the higher volume of MAS purchases suggest that the MAS price for WordPerfect 5.1 should have been at least equal to the Texas price.

Some of the terms and conditions of commercial sales to the general public were also similar to those in the MAS program. The commercial software prices we used in our analysis included delivery costs to any destination within the continental United States. Also, there was no quantity commitment on the part of the customer, and the customer was not obligated to buy from the vendor.

There were some differences between MAS and commercial terms and conditions, however. Because no contract was involved in the commercial sales, there was no protection against future price increases and no requirement that manufacturer price reductions to the dealer be passed on to the customer. These terms could justify MAS prices being higher than commercial prices. On the other hand, commercial prices were for the purchase of one of the identified products; in the MAS program, federal agencies bought thousands of these products. These volume differences suggest MAS prices should be lower than commercial prices.

We asked a panel of price analysts and other officials from GSA and the GSA OIG to review our information to determine why MAS prices were not as good as commercial prices or state prices for some of these top-selling items. They said that some of the lower non-MAS prices may have been due to differences in terms and conditions of sale that we had not considered. For example, they said the payment terms to the federal government may be more generous than those afforded to state governments or in commercial sales.¹⁴ They also said non-MAS prices may not include certain costs, such as installation and removal costs for copier rentals, which are included in MAS prices. However, the GSA representatives said all of the differences in terms and conditions could not explain the MAS/non-MAS price differentials we had identified.

¹³Texas officials said state agencies bought a total of 1,229 licenses of WordPerfect 5.1 with full documentation and media between July 1, 1992, and May 1, 1993. The total cost was slightly less than \$275,000. Three vendors in the MAS program sold 16,650 licenses of WordPerfect 5.1 with full documentation and media for a total cost of nearly \$4.3 million from April 1992 through March 1993.

¹⁴They said the federal government does not pay for products until they are delivered, whereas states and commercial customers may pay for products before delivery. However, documents we received from several states indicated that states do not pay for products until after an item is delivered in satisfactory condition.

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We also asked a panel of vendor representatives to review the information we collected on terms and conditions. Like the GSA officials, they said terms and conditions other than the ones we identified may help explain the MAS/non-MAS price differentials. The vendors said that although federal agencies are required to pay for the products they buy within 30 days of delivery, most do not pay until about 60 days after delivery. They said states and commercial customers typically pay for products within 30 days. They also cited such factors as expensive reporting requirements imposed on vendors under the MAS program, the cost of printing the MAS price catalog, and higher marketing costs under the MAS program. They said a substantial portion of the price differentials for IRMS products may be explained by the fact that many state governments award only one contract to sell these products to the states, whereas IRMS awards several contracts to sell the same products. They believed that for most of the products, differences in terms and conditions could account for any MAS price disadvantages.¹⁵

As noted previously, we believe that a number of the terms and conditions in the state contracts were similar to MAS terms and conditions and therefore do not explain the price differences. There were, however, some differences in state and MAS terms and conditions. Some of those differences, such as the value of having a single contract award, were difficult for us to value empirically. Furthermore, the value of these single contract awards may be lessened by other terms and conditions in the states' contracts. For example, Texas has a single awardee for certain items; however, the vendor is not guaranteed any sales, and no state agency is required to buy from that vendor. Also, at least one of the differences in terms and conditions cited by the vendor panel as contributing to higher MAS prices was contradicted by other evidence. We previously reported that state and federal payment requirements and practices were similar.¹⁶ Furthermore, the Office of Management and Budget (OMB) reported that 92.8 percent of federal payments to vendors in fiscal year 1992 were made within 30 days of the delivery of the products.¹⁷

¹⁵One exception was the price differential for the Canon copiers. A Canon representative on the vendor panel said differences in terms and conditions could not explain the MAS/non-MAS price differences for these products.

¹⁶Prompt Payment: State and Federal Payment-Timing Practices Are Similar (GAO/AFMD-89-91, Sept. 26, 1989) and Prompt Payment Act: Agencies Have Not Fully Achieved Available Benefits (GAO/AFMD-86-69, Aug. 28, 1986).

¹⁷OMB, Status of Federal Agency Prompt Payment: Report to Congress on FY 1992, January 1993.

Differences in
Manufacturers' Prices to
Dealers

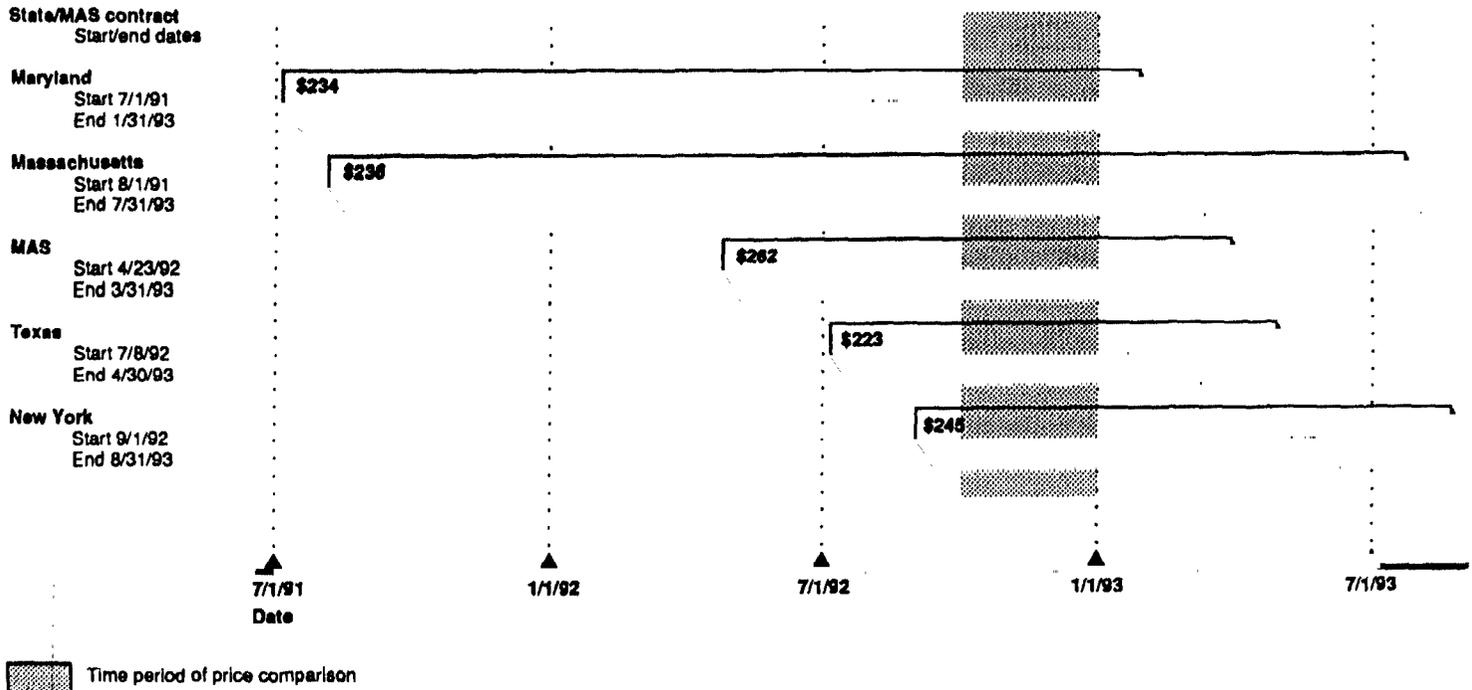
We believe that differences in terms and conditions were not the reason for all of the MAS price disadvantages we observed. For some of the items, MAS prices were higher than the prices paid by state governments because the manufacturers charged the primary MAS dealer more than what the states' dealers paid.¹⁸ As a result, the states received lower prices from their dealers than federal agencies received from the MAS dealer.

For example, we found several states with lower prices for WordPerfect 5.1 than the lowest MAS price of \$262. As noted previously, Texas bought the software from a non-MAS dealer for \$223; Maryland paid \$234; Massachusetts paid \$236; New York paid \$245. In each of these states, the dealers received a commitment from WordPerfect Corporation to keep their cost of the software constant for the term of the states' contracts. The state dealers' protected prices from the manufacturer were always lower than the primary MAS dealer's cost for the product. During the October through December 1992 time frame, one of these state dealers was also a MAS dealer. This dealer received lower prices from the manufacturer for sales to the state government than for sales through the MAS program.

The vendors we met with said these differences in price to the dealers could exist because of differences in the timing of the contracts. If the state dealers' prices were protected before the start of the MAS contract, they said, it was not unreasonable that those states' prices for WordPerfect were lower than the MAS price. In Maryland and Massachusetts, the dealers' protected prices were established before the start of the MAS contract. However, as figure 2.1 shows, the Texas and New York contracts began after the start of the MAS contract.

¹⁸One dealer sold more of these products through the MAS program than through other dealers. Because the dealer was noncommercial, GSA documents indicated the dealer's costs for the products that we examined.

Figure 2.1: States Paid Less Than the MAS Price for WordPerfect 5.1 in Contracts Starting Before and After the Start of the 1992-93 MAS Contract



The Director of Government Sales for WordPerfect Corporation told us that the cost of WordPerfect 5.1 to their dealers increased on January 1, 1992. However, the dealer for the state of Texas received a protected price for sales to the state at the 1991 price nearly 3 months after this price increase. The Director of Government Sales said this was because WordPerfect Corporation's government reseller program allows states to buy its products at a price no higher than the MAS price. Since the 1991 to 1992 MAS contract did not expire until April 1, 1992, the Texas dealer was able to lock in the 1991 price for WordPerfect on March 30, 1992. The Texas contract began July 8, 1992, (more than 3 months after the MAS price increased) and ran until April 30, 1993.¹⁹

¹⁹This contract was extended for an additional year and now expires on April 30, 1994.

The WordPerfect official also said that state dealers typically receive price protections by the time they respond to the states' solicitations, whereas MAS contractors' price protections typically begin at the start of the contract period. He said that if MAS contractors had asked for a protected price at the time of the MAS solicitation for the 1992 to 1993 contract period in September 1991 (3 months before the price increase), WordPerfect would have ensured that MAS prices would have remained at the 1991 level. However, he said none of the MAS dealers asked for price protection at the time of the MAS solicitation.

The WordPerfect official said the New York dealer paid the same price for the product as the primary MAS dealer. However, WordPerfect Corporation requires state dealers to prepay their purchases, for which they receive a 4-percent discount on top of their dealer discount. WordPerfect Corporation does not require MAS dealers to prepay for their purchases, and the primary MAS dealer did not do so.²⁰ As a result, the New York dealer actually paid 4 percent less than the MAS dealer. The WordPerfect official said this prepayment discount, combined with the fact that the New York dealer's profit margin was smaller than the primary MAS dealers' margin, accounted for the MAS-New York price difference.

WordPerfect was not the only product for which the primary MAS dealer paid more than state dealers. Most state dealers would not disclose what they paid the manufacturers for the products they sold to the states, but all of them said that their costs were less than their selling price (i.e., they were not losing money on the state sales). The following data we gathered suggest that the primary MAS dealer paid more than dealers supplying at least three other products to other states:

- The states of Texas, Virginia, and Washington purchased Borland Quattro Pro (version 4.0) from their dealers for less than the MAS dealer paid the manufacturer for the product. All three states' prices took effect after the MAS dealer's contract started in April 1992.
- The state of Virginia paid its dealer less than the MAS dealer paid for Lotus 1-2-3, version 3.1+. Virginia's contract began in October 1992, nearly 6 months after the start of the MAS dealer's contract.
- The state of Texas paid less than the MAS dealer for Novell Netware, version 3.11 (5-user). Texas' price took effect 5 months after the start of the MAS dealer's contract.

²⁰The WordPerfect official said MAS dealers could prepay and receive the discount, but most choose not to do so. A representative of the primary MAS dealer said they do not do so because the 4-percent discount is not worth the cost of prepayment.

Because (1) these state dealers' selling prices were less than the MAS dealer's costs and (2) these state dealers' costs were less than their selling prices, it is logical to conclude that these states' dealers paid less than the MAS dealer for the same products.²¹

One manufacturer of other products sold through the MAS program has made higher prices to federal dealers a company policy. The manufacturer notified one of its dealers in December 1992 that all GSA and off-schedule federal sales must be done under a GSA purchase agreement and that the maximum discount allowed to dealers for products under that agreement was usually lower than the one given to dealers for sales to commercial customers.²² Therefore, the manufacturer established two classes of discounts to dealers, one for sales to the federal government and a better one for sales to other customers. There also may be differences in prices from manufacturers to dealers for different types of federal sales. One dealer reportedly told the GSA OIG that manufacturers typically charge the dealer more for products sold through the MAS program than for the same product sold to the federal government through other means.

Conclusions

MAS prices were equal to or better than non-MAS prices for about half of the items we examined for which data were available. However, MAS prices for some items were substantially higher than the prices paid by some state governments and those available to the general public. The terms and conditions of sale in the MAS program were similar to the terms and conditions for these other customers in some respects and different in others. GSA officials and vendor representatives generally did not agree on whether the differences in terms and conditions explained why MAS prices were higher than non-MAS prices for these items.

We could not determine whether lower state and commercial prices for certain MAS products were justified by differences in terms and conditions of sale between the MAS program and state or commercial customers.

²¹Other states' dealers may have also bought some of these products at prices that were lower than the MAS dealer's cost. For example, the state of New York's dealer charged the state \$1 more than the MAS dealer's cost for one of the items. The state's dealer probably paid less than the MAS dealer for this item.

²²The GSA discount was usually 2 percentage points less than the commercial discount. The manufacturer said this differential was necessary because of the "administrative costs of supporting the reseller's schedule business" and cited such factors as provisions for price protections and guaranteed supply for GSA. However, a dealer for this manufacturer told us the terms and conditions cited by the manufacturer were not markedly different than in state contracts, and therefore would not support the difference in the discounts.

However, some states paid less than the MAS price for the same item, not because of differences in terms and conditions but because the states' dealers received lower prices from manufacturers than the MAS dealers.

MAS prices can be higher than the prices offered to a vendor's other customers and still be fair and reasonable if MAS terms and conditions make it more expensive to sell to the federal government than to these other customers. However, MAS dealers should not pay more than non-MAS dealers for the same products purchased at the same time under similar terms and conditions.

Recommendations

We recommend that the GSA Administrator

- periodically monitor state and commercial prices for top-selling MAS products to ensure that MAS prices are not higher than those of other customers under similar terms and conditions;
- examine the terms and conditions in the MAS program and, if they result in higher costs to the government, determine whether they are necessary and worth the additional cost; and
- amend MAS policies to ensure that when the contracting officer has information indicating that a prospective MAS dealer is paying more than non-MAS dealers for the same products bought at the same time under similar terms and conditions, GSA will not award a MAS contract unless the MAS dealer's proposed price to the government is less than or equal to other dealers' prices to comparable customers.

GSA and Vendor Comments and Our Evaluation

GSA Comments

In written comments dated July 2, 1993, the Acting GSA Administrator said that GSA agreed with the factual findings in our report and said GSA would use the information we developed to improve the MAS program. However, she took no position regarding our conclusions and recommendations pending the arrival of GSA's Administrator designate.

GSA contracting staff have already used some of the price information we provided them to achieve lower prices in MAS contract negotiations. For

example, GSA concluded negotiations with WordPerfect Corporation in May 1993 on prices for WordPerfect products, which resulted in substantial savings to the government from the previous year's contract. Using the information we provided, GSA contracting staff were able to negotiate a price of \$223 for WordPerfect 5.1 for the 1993 to 1994 contract year—down from \$262 in the previous year.

Vendor Comments

MAS vendors generally agreed with our recommendation that the GSA administrator monitor state and commercial prices. They said GSA should do more market research to determine price reasonableness rather than rely on data requirements imposed on the vendors. However, they believed that GSA should not assume that any lower state or commercial prices are appropriate for the MAS program. They said that differences in terms and conditions of sale, contract timing, and other factors could explain any differences in MAS and non-MAS prices.

The vendors said that the items we selected in the price comparisons could have been “loss leaders” and that the state or commercial vendors could make up for the lower prices on the items we targeted with higher prices on other items. They said a randomly selected group of items instead of top-selling items may have yielded different conclusions. They also noted a number of terms and conditions that we did not initially consider in our analysis that could affect the reasonableness of MAS versus non-MAS pricing.

We compared MAS and non-MAS prices for top-selling items because (1) a list of all MAS items from which a randomly selected list could be drawn was not available and (2) we believed it was particularly important that MAS prices be as low as possible on items federal agencies buy in volume. We considered some of the terms and conditions the vendors said we had not considered in our analysis. However, some of the other terms and conditions they suggested that we consider did not support the price differences we found. For example, although MAS vendors contended that federal agencies often do not pay for products promptly, OMB reported that over 90 percent of all federal payments to vendors in fiscal year 1992 were on time. It was difficult for us to determine empirically whether differences in terms and conditions could explain the price differences. Certainly, differences in terms and conditions between the government and other customers can legitimately lead to higher MAS prices. However, we believe that at least some of the MAS and state price differences were due to differences in the prices paid by MAS and state dealers, not to

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differences in terms and conditions. Therefore, we believe GSA should not buy products from a prospective MAS dealer when the contracting officer has information indicating that the dealer is paying more than non-MAS dealers for the same products bought at the same time under similar terms and conditions unless the MAS dealer's proposed price to the government is less than or equal to other dealers' prices to comparable customers.

MAS Negotiation Objectives Should Include Vendors' Best Discounts and Consider Differences in Terms and Conditions

GSA should negotiate the best prices it can for the goods and services that federal agencies buy through the MAS program. To achieve that objective, GSA would need to consider the discounts that prospective contractors give to all types of customers, particularly those who frequently receive the highest discounts. An offeror's highest discount should generally be the starting point of the price analysis GSA uses to establish the government's MAS negotiation objective. GSA contracting staff must also consider differences in the terms and conditions of sale between the government and the vendors' other customers in determining what discount the government should receive in a MAS contract. Vendors should identify and place a value on any differences in terms and conditions that they believe prevent them from providing their best discounts to the government.

Concerns about MAS negotiation objectives have centered on the following three issues: (1) which of the vendors' customers can be considered the MFC, (2) whether federal contracting officers adequately consider differences in terms and conditions between the government and the offeror's other customers, and (3) how consistently the government's negotiation objectives are applied by GSA contracting personnel.

GSA and Vendors Disagree on Which Customers Could Be Considered the MFC

Federal acquisition regulations require that the prices for goods and services in all federal contracts be "fair and reasonable." According to the MAS policy statement, the government's goal when negotiating MAS pricing arrangements is to obtain a discount from a firm's established catalog or commercial price list that is equal to or greater than the discount given to that firm's MFC. GSA uses the MFC negotiation goal in its attempt to achieve fair and reasonable pricing in the MAS program.

The discounts MAS vendors give to their nonfederal customers often vary from one type of customer to another, with their best discounts often going to dealers, distributors, and OEMs. Other customer categories, such as state and local governments, private sector companies, and other end users (i.e., customers that purchase items for their own use, not for resale), often receive lower discounts on (and therefore pay higher prices for) the products they buy from these vendors.¹

¹The exception to this general rule is educational institutions, which sometimes get high discounts for philanthropic reasons. GSA officials and contracting officers told us they do not negotiate for educational discounts, except when the product is used by federal educational institutions (e.g., military academies).

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MAS vendors told us that GSA should not negotiate for the discounts they give to OEMs, dealers, and distributors. They noted that section II of the MAS policy statement's contract pricing arrangements defines the MFC discount as

"equal to the best discount given by a firm to any entity with which that firm conducts business, other than the original equipment manufacturers (OEM), or participating dealers, and distributor's discount [emphasis added]."

However, the vendors said that GSA contracting officers regularly ignore this exemption and attempt to negotiate for the higher discounts.

Some vendors told us that GSA should examine the discounts prospective MAS contractors give to all of their customers. If GSA determines that a vendor's customer performs OEM, dealer, or distributor functions, the vendors said that the customer's discount should generally be eliminated from consideration as the government's negotiation objective. These vendors believe the government is an end user and, as such, should generally receive the discounts the vendors give to other end users. These vendors said that an OEM, dealer, or distributor discount could be an appropriate GSA negotiation objective only under certain circumstances. For example, if a manufacturer sold its products only to dealers, then GSA could legitimately use the dealer discounts as the initial target of its negotiations.

Other vendors were more adamant. They said that discounts given to nonend-user customer categories should not even be considered as a possible government negotiation objective. They said the government's negotiation objective should always be the category of customer that is most like the government—end users.

GSA officials and contracting officers told us that the MFC negotiation objective in the MAS policy statement includes the discounts vendors give to OEMs, dealers, and distributors. They pointed out that section IV of the policy statement's contract pricing arrangements requires contracting officers to collect and use OEM, dealer, and distributor data in the price analysis that results in the government's negotiation position. Limiting the government's negotiation objective to the discounts vendors give to end-user customers would, they said, result in higher prices to the government for MAS products.

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We believe that the MAS policy statement is ambiguous as to whether GSA contracting officers should consider the discounts offerors give to OEMs, participating dealers, and distributors as they develop the government's MAS negotiation objective. The policy statement both requires consideration of and excludes from consideration the discounts given to these types of customers.

As originally published for comment in May 1982, the policy statement specifically included OEMs, dealers, and distributors as possible MFCs. However, as a result of comments from business and industry before the final publication in November 1982, the definition of MFC in the policy statement was changed to exclude OEMs, participating dealers, and distributors. According to one of the authors of the policy statement, this change was made to assure vendors that GSA would not demand an offeror's best discount regardless of other conditions. Other sections of the policy statement were not substantially changed, thereby leading to the current ambiguity.

In 1985, GSA attempted to revise the policy statement to, among other things, delete the language in the MFC definition that some parties interpreted as an exclusion for dealers, distributors, and OEMs from consideration in establishing the government's negotiation objective. Under the proposed revision, the discounts given to these customer categories would have clearly been considered in developing the government's initial negotiation objective. However, GSA officials said that these changes were never implemented because of opposition from industry groups and because OMB never acted on GSA's request for approval of information collection requirements. GSA officials, including the Associate Administrator for Acquisition Policy and an author of the 1982 policy statement, told us that the MAS policy statement should be changed to specify clearly which types of vendors' customers can be considered MFCs.

In some of the contract files we examined, GSA contracting staff negotiated discounts that were equal to or better than those given to dealers, distributors, and OEMs. In other contracts, GSA did not achieve the discounts given to these customers but used information on those discounts to negotiate discounts that were better than those given to the vendors' end-user customers. Therefore, limiting the government's negotiation objective to the discounts vendors give to end-user customers

may have resulted in the government paying more for the products bought through these contracts.²

We took a position regarding the relevance of nonend-user discounts in MAS negotiations in our 1977 report on the MAS program.³ We noted that FSS did not believe that OEM discounts applied to procurements by the government because the government did not satisfy the contractor's definition of an OEM. We said that "the fact that the [g]overnment does not function as an original equipment manufacturer is not justification for failing to obtain comparable quantity price discounts." By not getting comparable discounts, we said, the government may be subsidizing contractors' sales to OEMs. We recommended that FSS develop procedures to enable it to obtain OEM discounts.

GSA Hopes MAS Pilot Test Will Clarify Negotiation Objective

In 1990, GSA started a MAS Improvement Project to, among other things, clarify the government's MAS requirements for both GSA contracting staff and vendors. In one of the first proposals resulting from the MAS Improvement Project, GSA tested a revised DSMD format and restated price negotiation objectives in five schedule solicitations. The pilot test ran from February 1992 until February 1993. In the pilot, offerors were asked to provide the government with discounts from their established catalog prices that were equal to or better than the best discounts given to any customer. Therefore, the pilot test resolved the lack of clarity in the MAS policy statement by requiring any of the offerors' discounts be considered when GSA established its negotiation objective. No customer's discounts were considered off limits in the pilot. The pilot's negotiation objectives also made it clear that there were circumstances in which the government did not expect to receive an offeror's best discounts. Factors GSA considered relevant in the pilot included (1) terms and conditions of written and/or oral agreements with customers, (2) estimated quantity or value of customer agreements, and (3) ancillary services (e.g., training or maintenance) performed for customers.⁴

²This situation is consistent with our findings in a 1986 report on the MAS program. We reported that GSA negotiators obtained MFC pricing or better in 15 of the 20 contracts we examined. See GSA Procurement: Are Prices Negotiated for Multiple Award Schedules Reasonable? (GAO/GGD-86-99BR, July 8, 1986), p. 9. It is also consistent with a 1987 study by GSA that showed that for 95 percent of the models tested, MAS prices were lower than the end-user prices. MAS prices were lower than the firms' lowest prices (including to OEMs or dealers) for 9 percent of the models tested.

³GAO/PSAD-77-69, March 4, 1977, p. 7.

⁴In a January 16, 1992, letter to GSA, OMB requested that GSA explicitly state that the intent of the pilot was "to obtain the best discount offered to any nonfederal customer, recognizing that there are circumstances, such as where the contractual relationships are not comparable, when the best discount may not be achieved."

MAS vendors and others expressed a number of concerns about the pilot test and contended that it was more than just a clarification or restatement of MAS negotiation objectives. For example, they said that the pilot test effectively revoked the section of the policy statement that excludes OEMs, participating dealers, and distributors from consideration as the MFC. By negotiating for the "best" discount, they said, GSA eliminated this exclusion. In response, GSA contended that the pilot test did not fundamentally change MAS pricing policy but was an attempt to more clearly explain those policies and practices while reducing the paperwork burden on MAS offerors.

Vendors Said Differences in Terms and Conditions Are Not Considered

The vendors' second general concern regarding the government's MAS negotiation objectives was that GSA contracting officers do not adequately consider differences in terms and conditions between the vendors' sales to the government and to their best customers. For example, a vendor's best discount may be given to customers who have only one ordering and delivery point, who commit to a fixed quantity of the product during the contract period, and who perform certain functions for the vendor, such as maintenance or training. The vendors said GSA wants the same discount for the government even though the government has multiple ordering and delivery points, provides no sales commitment, and performs no "value-added" functions. The vendors also said that the policy statement's requirement that they identify and value the differences in terms and conditions between the government and their MFCs is difficult and sometimes impossible to fulfill.

GSA officials admitted that a few contracting officers may demand an offeror's best discount without considering differences in terms and conditions. However, they said the vast majority of contracting officers do consider those factors. They noted that the MAS policy statement allows contracting officers to consider differences in terms and conditions when negotiating the government's discount, as long as they are legitimate. GSA officials disagreed that it was difficult for vendors to identify and value differences in terms and conditions. They said such a valuation is part of the process that businesses go through to determine a product's final price and that they must collect this type of information to claim business expense tax deductions.

In the mid-1980s, GSA attempted to clarify how differences in terms and conditions should be handled by contracting officers. In March 1985, GSA proposed that while the negotiation objective was the "best discount given

by a firm to any entity with which that firm conducts business," contracting officers could consider an award in "situations where the [g]overnment's terms and conditions may be different from those given the firm's most favored customers."⁵ In December 1985, after receiving public comments on the March proposal, GSA changed the proposed policy to state that one of the considerations in determining MAS negotiation objectives was a "comparison of the terms and conditions under which the [g]overnment and the other customers contract."⁶ The proposed revision went on to say that

"the contracting officer may consider factors cited by the offeror which make the [g]overnment different from other customers. For example, the offeror may grant special pricing to an original equipment manufacturer (OEM) because the OEM buys the product in a slightly different configuration, or with a different warranty, or in large quantities at one time. Similarly, dealers and distributors may receive special pricing because they buy in large quantities and/or provide marketing, warehousing, distribution or other services, thus relieving the offeror of these costs. State and local governments may receive special pricing because they establish, through the sealed bid, single award process, a contract in which the offeror will receive all of the state or local government's business for a year for that type of product/service."

GSA made it clear that it was the offeror who must identify and value these factors and that the contracting officers must obtain information they need to judge whether these factors and their valuation are reasonable. However, these changes were never implemented.⁷

Our analysis of the guidance GSA gave to its negotiating staff showed that some of the guidance could lead to inadequate consideration of differences in terms and conditions. For example, the Director of the Operations Management Division in FSS told GSA contracting personnel in one memo that industry concerns about differences in terms and conditions "have very little merit." The memo went on to say that if a vendor's MFC's volume of purchase is small compared to the government's aggregate volume of purchase, "then notwithstanding the services performed or difference in characteristics, the negotiation strategy should include comparable discounts for the [g]overnment."

In one of the contract files we reviewed, GSA negotiators initially disregarded differences in terms and conditions. The vendor claimed that

⁵50 Federal Register 11911 (1985).

⁶50 Federal Register 50503 (1985).

⁷GSA requested OMB approval of these and other changes in 1985 and 1987. GSA officials said OMB has not acted on their request.

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the government should accept less than its established discounts primarily because the MAS solicitation said that the government would not permit any price increase during the first 12 months of the contract. The vendor's other customers did not have this price protection guarantee. The price negotiation memo for this contract said GSA negotiators told the vendor "[i]t is not the [g]overnment's policy to give credit to a firm for complying with solicitation terms and conditions" and that this was "a cost of doing business with the [g]overnment."⁸

Overall, however, our discussions with GSA contracting staff and our contract file reviews did not indicate that legitimate differences in terms and conditions were commonly ignored. If it was more expensive to sell to the government through the MAS program than to the vendor's MFC (e.g., because of multiple ordering and delivery points or government warranty or delivery requirements), GSA negotiators typically did not demand the vendor's MFC discount. For example, the prenegotiation memo for one of the contracts we examined said that GSA could accept discounts that were not equal to those given to other customers because certain terms and conditions applicable to the government's contract would result in increased costs to the vendor and "must be taken into consideration when establishing the [g]overnment's negotiation position." The price analysis for that contract enumerated some of the government's terms and conditions that make higher discounts unavailable—multiple (and uncertain) ordering and shipping points, limitations on price increases for 12 months, and costs associated with printing and shipping the government catalog. The vendor's commercial customers, on the other hand, received shipments to a single location or to a clearly defined geographic area, were subject to price increases at any time, and did not require a separate price list.

We also found instances in the contract files in which the vendor placed a value on the differences in terms and conditions that they said kept the government from getting the best discount. For example, one company said that the discount they gave to their distributors and wholesalers was based on those dealers performing certain functions, with the total value of those functions equal to 18 percent. The company valued each of the functions as follows: cost of carrying inventory (7.2 percent), sales/promotion cost (about 5.8 percent), order handling cost (about 2.9 percent), and credit costs (about 2.1 percent). Therefore, the vendor said, the discount they offered to GSA was not as good as the discount they

⁸However, the negotiators later used the 12-month firm price as a justification for negotiating less than the MFC discount, arguing firm-fixed prices for a year were the equivalent of a 1-percent discount in up-front prices.

gave to their distributors and wholesalers. The GSA contracting officer said that given this valuation, the discount offered to the government was 5 percent better than some distributors and only about 2 percent worse than others. The contracting officer said this difference was “nominal” and could be “accepted without further discussion.”

In some of the contract documents we examined, vendors claimed that they could not place a quantitative value on the terms and conditions that made it more expensive to sell to the government. When these situations occurred, GSA refused to award a contract until the information was provided. For example, one vendor's best discount was 15 percent, but the vendor offered the government 10 percent. The vendor's representative claimed that the 5-percentage-point difference was because of the “cost to do business with the government” but said that he was unable to place a value on the individual factors. According to the price negotiation memo, GSA negotiators told the vendor that “without supporting documents to what the cost is there is no way the [g]overnment will give him the ‘5%’ differential for consideration.” After several rounds of negotiations, the vendor ultimately identified and valued the business costs that prevented the government from getting the 15-percent discount. GSA determined that the valuations were reasonable and accepted a 10.25-percent discount.

We found a number of instances in the contract files we reviewed in which the differences in terms and conditions cited by the vendor were not considered valid by GSA negotiators or OIG auditors. In those instances, GSA contracting staff usually did not reduce the government's negotiation objectives,⁹ as shown in the following examples:

- Some vendors contended that large commercial customers received their MFC discounts because they agreed to buy a specific quantity of their products. Because the MAS program does not provide such a commitment, the vendors refused to offer GSA a comparable discount. However, a GSA OIG audit of one of the vendors' selling practices revealed that the quantity commitments made by the vendors' customers were sometimes not achieved and that no penalty was assessed. GSA contended that the quantity commitment was therefore meaningless and not a valid justification for giving the government a lower discount.
- Another vendor contended that GSA was not entitled to its MFC discount because, among other things, the government was the only customer that

⁹In one such instance, the contracting staff did reduce their negotiation objective. The vendor claimed that its best discount was off limits because the customer who received its best discount gave the vendor a quantity commitment. The price negotiation memo stated that GSA found only one contract cited by the vendor involved such a commitment. Nevertheless, GSA did not pursue this discount.

received a firm-fixed price for 1 year. The vendor said that its standard "terms and conditions" clause limited price quotes to 30 days. However, a GSA OIG audit revealed that the vendor had held firm prices quoted to commercial customers for up to 11 months. The audit also revealed that this practice was extended to all customers except GSA. The same vendor also said it was more expensive to do business with the federal government than with commercial customers but provided no supporting documentation. GSA found evidence that it was not more expensive to sell to the government; the vendor's largest customer had multiple ordering and delivery locations and similar purchasing patterns as the government.

GSA contracting officers said they frequently find differences in terms and conditions claimed by vendors to be invalid. They said vendors sometimes attempt to reduce the government's discounts because of nonrequired services they provide (e.g., seminars) or because of services they perform for all customers (e.g., maintaining an inventory).

GSA Contracting Staff Inconsistently Applied MAS Negotiation Objectives

Vendors also were concerned that GSA contracting personnel inconsistently applied MAS negotiation objectives. Specifically, they said some contracting officers defined MFC one way and others defined it another way. The vendors said that these inconsistencies occurred between IRMS and FSS, between FSS regions, and between contracting officers within each service.¹⁰

Our discussions with GSA contracting personnel and our review of contract documentation indicated that the MAS negotiation objective was being inconsistently applied. The contracting staff we met with in the focus groups differed on how they defined MAS negotiation objectives. Differences in MAS negotiation objectives were also apparent in the contract files we reviewed. Sometimes, GSA's initial negotiation objective was the vendor's best disclosed discount, regardless of customer category; sometimes the best discount was not the objective. Differences occurred between FSS and IRMS, between FSS headquarters and a field location, and between individual contracting staff members within a service and location.

¹⁰Vendors have expressed concerns about inconsistencies in the application of schedule negotiation standards for some time. See, for example, Digital Equipment Corporation, B-180833, July 2, 1974, 74-2 CPD 2.

FSS Regional Office and
Headquarters' Objectives

In all three of the contracts we reviewed from FSS's regional office in Fort Worth, the contracting officers' initial objective was the best discount the vendors gave to any category of customer. No category of customer was considered "off limits" at the start of the negotiations. The discounts they ultimately negotiated were always better than end-users' discounts.¹¹ The contracting personnel we met with in this region told us they always negotiate for the best discount given to any category of customer and commonly get dealer pricing in MAS contracts.

The contract files indicated that FSS contracting personnel at headquarters differed in their approach to the negotiation objective. Some FSS headquarters contracting staff members negotiated for the best discounts vendors gave to any other customer, regardless of customer category. Other FSS headquarters staff members eliminated certain discounts from consideration as the government's MFC negotiation objective, even though they were some of the offerors' best discounts.

In one contract document the vendor disclosed that discounts of up to 27 percent were given to OEMs and "value-added resellers." According to the prenegotiation memo, the contracting officer and specialist eliminated these discounts from consideration as the government's negotiation objective because OEMs and dealers "add value" to the vendor's products and therefore change the products. However, the GSA order cited in the memo to support this action said that GSA would not pursue OEM discounts if the product sold to an OEM were changed by the offeror (not if it were changed by the OEM).¹² The price negotiation memo for this contract said that the vendor's best discounts were not the basis of the negotiations "in accordance with MAS policy on OEMs." The contracting specialist told us that GSA must exclude any customer who does not use a vendor's product in the same way as the government, even though the government and that customer are buying exactly the same product. The specialist also said that she believed the MAS policy statement requires that OEMs and participating dealers be excluded from consideration as the MFC. The government's negotiation objective in this contract became "commercial end-users" because, according to the prenegotiation memo, they were "the

¹¹In fact, all three vendors offered the government at least their MFC discount at the start of the negotiations. The contracting officers we spoke with in Fort Worth said they often are offered the vendor's best discount. Contracting officers at FSS headquarters and at IRMS said they are rarely offered the vendors' best discounts.

¹²Section IV of the MAS policy statement's contract pricing arrangements also says information on OEM and dealer discount or pricing arrangements will be obtained when the same or similar product or service is offered to the government under the MAS contract. If an offeror says the product sold to an OEM is different, the offeror must substantiate the claim or provide OEM discount or pricing data.

category of customer that most closely buys in the same pattern and for the same end use as the [g]overnment." Although the government was the vendor's largest single customer, the discounts GSA ultimately negotiated (5.5 to 19.0 percent) were sometimes not as good as the vendor's best commercial customers' discounts. This MAS contract was worth several hundred million dollars.

In another contract, the vendor disclosed that OEMs' normal discount for one product model was 25 percent but that discount was eliminated from consideration as the MFC negotiation objective. Instead, the prenegotiation memo indicated that the vendor's commercial end-user customers were considered the MFC because they were the firm's largest market segment (except for the government) and were the customers who bought "nearest like the [g]overnment." End users' regular discount from this vendor was 7 percent. A GSA price analyst involved in the negotiation of this contract said GSA negotiators eliminated OEMs from consideration as the MFC because OEMs have a "closer relationship" with the vendor than does the government. However, he acknowledged that the policy statement does not define MFC in terms of market segment or buying patterns and does not say OEMs should be eliminated from consideration as the MFC because of their "close relationship" to the vendor. GSA ultimately negotiated a 6-percent discount in this contract.

IRMS Negotiation Objectives

IRMS contracting officers we met with said the particular customer category or discount they choose as their initial negotiation objective depends on the circumstances in each negotiation. Although no category of customer is automatically "off limits" from consideration as the MFC, the contracting officers said they generally negotiate for the discount given to vendors' large-volume end-user customers because these customers are most like the government.

The IRMS contract files we reviewed indicated that OEM, dealer, and distributor discounts were sometimes not part of the government's prenegotiation objectives because they were considered off limits by contracting officers. For example:

- In one contract, the vendor never submitted certified DSMD sheets (as required by the MAS policy statement) describing the discounts it gave to all customer categories. Instead, the contracting officer allowed the vendor to submit information only on the discounts given to its top-10 commercial customers plus 2 state governments and 1 local government.

Although the price negotiation memo refers to these customers as the vendor's "most favored customers," GSA officials later told us that the discount information submitted by the vendor was actually insufficient to determine the MFC because certified information on all types of customers was not provided. The contracting officer said he used these end-user discounts as the basis of negotiation even though he realized that it was likely that higher discounts were given to the vendor's dealers, distributors, and OEMs. He told us that the discounts given to nonend-user customers such as OEMs, dealers, and distributors should be "off the table" when setting the government's negotiation objectives because the government is an end user.

- In another contract, the basis for negotiation and award established in the prenegotiation memo was the vendor's commercial volume end-user discount. According to the price negotiation memo, the government did not qualify for the best discounts given to OEMs and dealers because it did not perform OEM and dealer functions. The memo says the discounts given to dealers cannot be compared to the GSA discount. We asked the contracting officer who negotiated this contract why dealer and OEM discounts could not be used as the starting point of negotiations, with the vendor identifying and valuing the terms and conditions that make those discounts unavailable to the government. He said that was possible and told us that he might do so in the future.

Some of the FSS and IRMS contracts in which the best discounts were not the initial target of negotiation were valued in the hundreds of millions of dollars. Although it is impossible to say in retrospect what discounts could have been negotiated had the best discounts been the initial focus of the negotiations, small improvements in the negotiated discounts on these contracts could have saved the government millions of dollars in the purchase price of these goods and services.¹³

Reasons for Inconsistency

The OIG and GSA officials we spoke with agreed that MAS negotiation procedures are inconsistently applied and said several factors could contribute to those inconsistencies. One obvious factor is the ambiguity in the MAS policy statement described earlier in this chapter. Because the policy statement is unclear regarding whether OEMs', dealers', and

¹³These findings are consistent with prior reviews of the MAS program. In a 1986 report, we said GSA negotiators could have gotten better prices had they exercised better business judgment. GSA officials told us that negotiators should have pursued the best possible prices and discounts. (GAO/GGD-86-99BR, July 8, 1986, p. 13.) In its July 1992 *Review of Contract Workload Management* (p. 17), the GSA OIG found no indication that clear prenegotiation objectives had ever been established in 57 percent of the IRMS files and 19 percent of the FSS files they analyzed.

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distributors' discounts can be used in setting the government's negotiation objectives, it is not surprising that contracting officers' actions reflect that ambiguity.

Another possible reason for inconsistent negotiation procedures is that the guidance MAS contracting officers have been given by GSA officials is inconsistent. Although GSA officials said that OEM, dealer, and distributor discounts should be considered as possible MFC negotiation objectives, some of the guidance given to contracting officers by these officials suggested that these often higher discounts should be excluded from consideration. For example, an FSS procurement information bulletin published in 1989 stated that if an OEM modified or incorporated a vendor's products into its product (i.e., actually performed OEM functions), that condition "substantiated an exclusion." GSA officials agreed the guidance could be misleading and told us that they would make it clear that OEMS should not be excluded from consideration as possible MFCs if the products or services they purchased were substantially the same as those bought by the government.

Another such bulletin published in 1989 said that "[i]f the contract specialist determines that the circumstances required of the MFC cannot be met by the government the contract specialist must then focus on the second most favored customer." A contract specialist could read this guidance and conclude that if the MFC's terms and conditions are not the same as the government's, that discount should not be the government's negotiation objective (as opposed to having the vendor identify and place a value on the MFC's terms and conditions that prevents the vendor from providing the MFC discount to the government). GSA officials agreed that this interpretation was possible and said they would make it clear in future guidance that customers with different terms and conditions could still be considered the MFC.

Another possible source of inconsistency is inadequate training of contracting staff. Procurement officials surveyed by the GSA OIG said a lack of job-specific training and formal reference materials have lessened the overall skill levels of some procurement units. They said this situation was especially true "in the IRMS MAS area."¹⁴ Sixty-seven percent of IRMS respondents in the Schedules Division (which negotiates MAS contracts) said their guidelines and reference materials were "unsatisfactory." Many procurement professionals in that division told the OIG that the lack of

¹⁴GSA OIG, Review of Contract Workload Management, July 10, 1992, p. ii.

written guidelines often leads to confusion, inefficiencies, and inconsistencies in the negotiation and award processes.

Both FSS and IRMS have provided some training to contracting staff in the past. However, MAS program officials said more contracting officer training was needed. They said the MAS program is unlike any other type of procurement and so even experienced contracting officers would need specialized training. FSS began a comprehensive, week-long training course for its contracting officers in MAS procedures in November 1992, with subsequent sessions in various locations throughout the country.¹⁵

Another reason for MAS negotiation inconsistency as well as higher MAS prices could be the typical contracting officer's workload. A July 1992 OIG review of GSA contract workload management concluded that FSS procurement professionals had, on average, only about 1-1/3 weeks to negotiate a MAS contract from start to finish. IRMS procurement officials had less than 1 week to do so. The report said

"[w]e believe this raises a valid question as to whether MAS procurement professionals have sufficient time to adequately prepare for and negotiate the best possible terms and prices for the [g]overnment and provide efficient and effective client service."¹⁶

More than half of the MAS procurement professionals surveyed by the OIG said they did not have sufficient time to properly manage their workload.¹⁷

Conclusions

GSA contracting officers cannot negotiate the best prices for MAS products and services unless they consider the discounts that MAS offerors give to their best customers. The discounts offerors give to dealers, distributors, and OEMs should not be considered "off limits" simply because the government does not perform certain functions that those types of customers perform. We believe an offeror's best discount should generally

¹⁵The need for procurement training is not confined to the MAS program. In a July 1992 report on *Workforce Quality and Federal Procurement: An Assessment*, the U.S. Merit Systems Protection Board recommended, among other things, increased training to improve the quality of the procurement workforce.

¹⁶*Review of Contract Workload Management*, p. 12.

¹⁷We noted in a 1979 report on the MAS program that these time constraints and other pressures often result "in the award of as many contracts as possible with little time and attention given to negotiating the lowest possible price." (GAO/PSAD-79-71, May 2, 1979, pp. 15-16.)

be the starting point of the price analysis GSA uses to establish the government's MAS negotiation objective.¹⁸

However, GSA contracting staff must also consider legitimate differences in the terms and conditions of sale between the government's MAS purchases and vendors' other customers. If it is more expensive for a vendor to sell to the government than to the customer who receives the vendor's best discount or if the customer who receives the best discount performs certain value-added functions for the vendor that the government does not perform, then some reduction in the discount given to the government would be appropriate. To accomplish this, prospective vendors should identify and place a value on any differences in terms and conditions that prevent them from giving the government their best discounts.

Recommendations

We recommend that the GSA Administrator

- amend MAS policies to clearly state that the price analysis GSA does to establish the government's MAS negotiation objectives should start with the best discount given to any of the vendor's customers but that GSA must consider legitimate differences in terms and conditions identified and valued by the offeror when negotiating the government's MAS discount, and
- take steps to ensure that MAS negotiation procedures are implemented in a consistent manner by contracting staff in both IRMS and FSS. (For example, GSA should periodically train MAS contracting officers and specialists in MAS procedures and develop and provide reference materials to these staff which clearly reflect MAS policies.)

¹⁸Although we believe that GSA contracting officers should generally start at the offeror's highest discount, there may be instances in which focusing solely on that discount would not be prudent. For example, an offeror's best discount may be 70 percent, but proper consideration of legitimate terms and conditions differences (as enumerated by the offeror) would reduce the government's discount to 50 percent. The offeror's second-best discount may be 60 percent, but because this customer's terms and conditions are nearly the same as the government's, the government should also get a 60-percent discount. In that instance, the basis of the government's negotiation should be the 60-percent discount, not the 70-percent discount.

GSA and Vendor Comments and Our Evaluation

GSA Comments

In written comments dated July 2, 1993, the Acting GSA Administrator said that GSA agreed with the factual findings in our report and said GSA would use the information we developed to improve the MAS program. She took no position regarding our conclusions and recommendations pending the arrival of GSA's Administrator designate.

However, GSA has proposed changes to the GSA Acquisition Regulation that adopt the central elements of our recommendations regarding MAS negotiation objectives.¹⁹ The proposed rule would cancel the MAS policy statement and extend the pilot test's restated negotiation objectives to all MAS solicitations. As we noted earlier, GSA's MAS negotiation objective in the pilot test was "to obtain an offeror's best discounts recognizing, however, that there are circumstances, such as where the contractual relationships are not comparable when the best discount may not be achieved." The proposed regulation clarifies the pilot's objective by specifying that "GSA's contracting officers will consider all relevant terms and conditions of commercial agreements when establishing negotiation objectives." Therefore, if the proposed changes are adopted, we believe the ambiguity in the MAS policy statement regarding GSA's MAS negotiation objectives will be eliminated. The price analysis resulting in GSA's negotiation objective will start with the offeror's best discount but contracting officers will be required to consider relevant terms and conditions differences between the government and the customer who receives an offeror's best discount. The proposed regulation also says that it is the offeror's responsibility to identify and value terms and conditions differences between the government and the offeror's other customers.

By eliminating the ambiguity in the MAS policy statement's negotiation objectives, the proposed changes can also help alleviate the inconsistency we discovered in the application of those negotiation objectives. Nevertheless, we believe that GSA needs to do more to ensure consistent application of MAS negotiation objectives. For example, FSS' current 5-day training class in MAS contracting procedures should be amended as necessary and provided to IRMS staff as well, particularly since GSA's OIG survey showed the need for training was greatest in IRMS. IRMS contracting

¹⁹58 Federal Register 32085 (1993).

officers should also have a desk guide which clearly describes proper MAS contracting procedures. IRMS and FSS should both review existing MAS contracting officer guidance to ensure that any incorrect or ambiguous information is eliminated.

Vendor Comments

The vendors generally disagreed with our recommendations. They said GSA's price analysis should not start with the best discount given to any customer, because vendors' best discounts are often given to OEMs, dealers, and distributors who perform certain functions on their behalf. Federal agencies, the vendors said, do not perform OEM, dealer, or distributor functions; therefore, it is more expensive to sell to federal customers. They said that GSA's price objective should be "fair and reasonable" prices, not the absolute best price they have given to anyone at any time. They agreed that GSA should be required to consider differences in terms and conditions between the federal government and the customer who receives the best discount but said that vendors should not be required to identify and value all such differences. They said some differences in terms and conditions cannot be valued. Furthermore, they were concerned that GSA would require cost or pricing data to substantiate their terms and conditions estimates. The vendors did, however, support our recommendation that GSA administer the MAS program in a more consistent fashion.

We believe GSA cannot negotiate the best prices for federal agencies if the best discounts given to OEMs, dealers, and distributors are "off the table" at the start of the price analysis. However, if differences in terms and conditions make it more expensive to sell to the federal government than to these types of customers, GSA should not expect to receive the discounts given to these customers. A "fair and reasonable" price is the goal in all federal procurement but is too vague to use as the starting point for the price analysis. Starting that analysis at the best discount given to any customer is a clear standard.

Vendors should identify and value the differences in terms and conditions that prevent them from giving the government their best prices. Contracts we reviewed indicated that vendors can and have done so in the past. Vendors should be able to explain their valuations and why the government does not deserve their best discounts, but vendors should not be required to provide cost or pricing data to justify all claimed differences in terms and conditions. GSA has said that the policy statement does not require offerors to submit detailed cost breakdowns of differences in

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terms and conditions. Furthermore, GSA contracting officers' workloads prevent them from reviewing such data to validate each term or condition valuation.

MAS Data Requirements Should Be Clear and the Minimum Necessary to Determine Price Reasonableness

Federal acquisition regulations require GSA contracting officers to determine that the government is getting a fair and reasonable price before awarding any federal contract. To make that determination, GSA needs information on sales, discounts, and marketing practices from prospective MAS vendors. Some vendors have suggested that GSA should not require any information and that GSA should determine price reasonableness by analyzing the commercial market. Other vendors believed that some data may be necessary but said that the current requirements are unreasonable and irrelevant to GSA's legitimate negotiation objectives. OIG audits have found that to a very large extent, contractors do not adequately disclose their discount and marketing practices to GSA. Although we believe it is appropriate for GSA to obtain information to determine price reasonableness, the data requirements themselves should be reasonable. Alternative data requirements could both satisfy GSA's need for information and help alleviate some of the vendors' data concerns.

Background of MAS Data Requirements

Before 1962, no statute required contractors to submit information to help contracting officers determine whether the government was getting a fair and reasonable price. In 1962, Congress enacted the Truth in Negotiations Act, which required defense contractors to submit "cost or pricing data" for certain contracts so that the government could determine price reasonableness.¹ These requirements were extended to contracts with civilian agencies by federal procurement regulations and ultimately through legislation in the Competition in Contracting Act of 1984.²

Cost or pricing data include all of the cost factors (e.g., labor, materials, overhead, and transportation) that are considered in pricing an item. However, offerors may be exempt from submitting cost or pricing data if prices are based on (1) adequate price competition, (2) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (3) prices set by law or regulation. Because the purpose of the MAS program is to make commercial items available to the federal government, the exemption based on substantial sales of commercial items to the public is usually claimed by MAS offerors to avoid submission of cost or pricing data.

To verify that this "commerciality" exemption is proper, GSA requests information from prospective vendors on their sales, discounts, and marketing practices in the DSMD sheets that must be submitted with each

¹10 U.S.C. 2306a.

²41 U.S.C. 254(d).

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proposal. Offerors must certify that the items for which cost or pricing data are not provided qualify for an exemption. GSA tests a sample of items within each product category to determine their commerciality.³ If certain items are not found to be commercial, they must be removed from the offering or must be justified with cost or pricing data.

The information in the DSMD sheets is also used in the price analysis to establish the government's negotiation objectives and to determine the reasonableness of the prices offered to the government. In the DSMD, offerors are required to disclose the best discounts and/or concessions provided to any customer other than the federal government. The required disclosures include regular, quantity, aggregate, and prompt payment discounts; commissions to other than the offeror's employees; and other information. This information must be provided for each category of customer to which the offeror sells the product, including dealers, distributors, educational institutions, state and local governments, OEMs, and others.

Failure to provide the required DSMD information may result in a vendor's offer being rejected without further consideration. The offeror must certify that the sales, discount, and marketing data submitted are complete, accurate, and current. If the data are later found to be otherwise, the MAS contract may be terminated and the vendor may be subject to monetary claims. The vendor may also be declared ineligible for future procurement and/or liable for civil or criminal penalties.

DSMD Often Incomplete or
Inaccurate

Despite these potential consequences, the GSA OIG said in its June 1992 audit highlights report that, "to a very large extent, contractors submitting DSMD packages do not adequately disclose their discount practices to GSA."⁴ Approximately 73 percent of the 135 FSS offerors and 55 percent of the 66 IRMS offerors audited in fiscal year 1991 did not disclose the accurate and complete information contracting officers needed to negotiate MFC prices. In some cases, the same offerors had previously failed to disclose this information. The OIG said it typically found discounts granted to commercial end users that were higher than those disclosed and offered to the government. The report said that without that information, "a contracting officer is hard pressed to evaluate and pursue the maximum

³See FAR 15.804-3(c) for a description of the exemption from cost or pricing data based on commerciality.

⁴OIG Audit Highlights, p. 54.

discounts and concessions equal to or better than those which are given comparably favored customers.”

GSA contracting staff also said it was often difficult to obtain accurate DSMD from vendors. One contracting officer said he had 25 to 30 meetings with a prospective contractor before he was told of discounts that were significantly better than the vendor’s stated policies or published discounts. He said contracting officers must ask just the right questions if they are to learn about a vendor’s best discounts or prices.

GSA’s determination of price reasonableness does not rely solely on a vendor’s discount structure or cost and pricing data, however. GSA can refuse to place a product on the schedules if other information indicates the dealer’s price is unreasonable. For example, a vendor may offer GSA its MFC discount, but GSA may discover that the vendor’s prices are not as good as what can be obtained in the open market or what other users are paying for the product. If so, GSA can refuse to place the vendor’s products on the schedules.⁵

Vendors and GSA Disagree Regarding General Data Requirements Issues

Vendors have voiced numerous concerns about the MAS program’s general data requirements. At the broadest level, some vendors told us that GSA should not require them to provide any information on the discounts they provide to their other customers. They said that none of their other customers require this type of data to be submitted, so GSA should follow commercial buying practice and not require it either. They said GSA contracting officers should determine price reasonableness by analyzing the commercial market using publicly available information on prices and discounts. If GSA did so, the vendors contended, MAS data requirements could be eliminated.

Other vendors said that although some type of MAS data requirement may be necessary, some of the data they are required to submit are irrelevant to GSA’s legitimate negotiation objectives and therefore should not be collected. As noted in chapter 3, vendors generally said that GSA’s negotiation objective should not include the discounts offerors give to OEMs, dealers, and distributors. Therefore, they said, prospective contractors should not have to provide GSA with data on discounts they give to these types of customers. The vendors also said that GSA should not negotiate for or collect information on “one-time-only” promotional

⁵See, for example, *M.S. Ginn Company*, B-215579, December 26, 1984, 84-2 CPD 701. In this decision, we determined that even though an offeror had provided GSA its MFC discount, “it does not follow that its offer is necessarily reasonable.”

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discounts or erroneous discounts given outside the boundaries of vendors' established company practice.

Vendors also said that GSA's data requirements place an unreasonable burden on prospective contractors. GSA requires offerors to disclose their best discounts for each GSA-specified category of customer and for the top items within GSA-specified product groupings. The vendors pointed out that to disclose their best discounts they must search through all of the discounts they have given to any customer. This can be extremely difficult or even impossible, they said, because they may have to review millions of transactions to find their best discount. They also emphasized that GSA requires the information to be provided within specific customer categories and product groupings that are not used outside of the federal government. Because the government is the only customer who demands this type of information and in this form, the vendors said they must incur added expense to retrieve the information and provide it in the format that GSA requires.

Another vendor concern was the lack of clarity in MAS data requirements. The vendors cited a U.S. district court opinion in which the judge said that MAS data requirements were so confusing that he could not understand them. When the case was appealed, the judge in a U.S. court of appeals said that the requirements were "virtually unintelligible" when read literally.⁶ The vendors said that given the unintelligibility of these requirements, it was not surprising that the GSA OIG often found the discount information it reviewed incomplete or inaccurate. The lack of clarity in the data requirements is particularly troublesome, they said, given that a failure to discover and disclose their best discounts could have serious legal consequences—from suspension and debarment to civil and criminal penalties.

GSA officials and contracting staff said that MAS data requirements are necessary to protect the government's interests in contract negotiations. They said that they use public information on product prices when negotiating MAS contracts in conjunction with the information they obtain from the vendors through the DSMD sheets.⁷ However, they said public information and published price lists cannot take the place of the DSMD

⁶U.S. v. Data Translation, Inc., No. 89-2192-H (D.Mass. Feb. 10, 1992), affirmed, No. 92-1496 (1st Cir. Dec. 31, 1992).

⁷For example, one former IRMS contracting officer said he used such sources as The Computer Shopper, The Computer Report & the PC Street Price Index, BYTE magazine, and the business section of the Washington Post to determine market prices for computer products.

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sheets because (1) the public information does not cover all of the millions of products on the schedules, (2) published price lists do not reveal the actual discounts vendors give to their best customers,⁸ and (3) a “head-to-head” negotiation of prices for each of the items on the schedules would require a substantial expansion of MAS contracting staff. Using only public information and price lists would, they said, result in higher prices to the government.

Like the vendors, GSA officials believe the data requirements should parallel its MAS negotiation objectives. However, because GSA officials interpret the MFC negotiation objective to include discounts given to any category of customer, they believe data should be collected from vendors regarding all customer categories. GSA contracting officers said they do not target “one-time-only” or erroneous discounts for the government’s negotiation objective but said they do need to know about these discounts to determine that they are not the vendor’s normal practice.

GSA officials and contracting officers said that vendors either have or could have information retrieval systems that could easily capture discount information. GSA OIG officials questioned how difficult it is for vendors to find information on their best discounts when OIG audits disclose those discounts using the vendors’ own data retrieval systems. The officials said vendors could find these discounts too; it is just not in their interest to do so. The head of GSA’s Office of Acquisition Policy said companies usually give their sales agents discount parameters within which they are allowed to operate. He said he doubted that companies tell their sales agents “go out there and negotiate whatever price you can.” Because of these parameters, he said, companies know what their best discounts could be even before they search their records. He also said large companies, particularly large computer companies, should have information systems that can provide the information GSA needs.

These comments notwithstanding, GSA officials and contracting officers we spoke with believed some changes could and should be made to lessen the MAS program’s data requirements. Officials in the Office of Acquisition Policy said the confusing nature of MAS data requirements may have contributed to the relatively high rate of incomplete or inaccurate DSMD submissions found by GSA’s OIG. The Director of the Operations Management Division in FSS said the DSMD sheets are frequently considered burdensome and perplexing by GSA contracting personnel as well as by the

⁸Some of the vendors also said published prices are not the same as “established” prices for their best customers. For example, one vendor said a company may have a published 10-percent discount policy but normally sell at 30-percent off list prices.

vendors. Contracting officers told us they are sometimes overwhelmed by the volume of data that vendors provide (some of which is reportedly unsolicited by GSA) and believed MAS data requirements could be reduced somewhat.

In 1987, the Associate Administrator for Acquisition Policy said “we also recognize that the data requirements should be kept at the minimum needed to ensure the best possible prices given the [g]overnment’s annual volume of purchases under MAS contracts and taking into consideration the differences in terms and conditions in a vendor’s contracts with other customers.” GSA asked industry representatives for ideas on how to reduce the administrative burden of the data requirements. According to GSA, industry representatives suggested that GSA eliminate the requirement that they disclose their best discounts. GSA rejected this suggestion as contrary to the tenor of our recommendations in our 1986 report on the MAS program.⁹

FSS tried to clarify MAS data requirements by publishing a vendor guide in April 1992. The guide provides information on the preparation of FSS MAS offers, a question-and-answer section on a variety of MAS topics, a copy of the MAS policy statement, and other information. IRMS has yet to develop a vendor guide for IRMS procurements.¹⁰ FSS officials also said FSS has included solicitation checklists with MAS solicitations and participated in vendor workshops.

We spoke with private sector procurement officials and others knowledgeable about contract negotiations to determine whether GSA’s data requirements are different from private sector buying practices. We were told that there is no single commercial procurement practice and that different companies buy commercial products in different ways. However, some companies do obtain information from vendors before or during negotiations, as the following examples illustrate:

- Some of the private sector officials we spoke with said their companies obtained cost and/or discount data from vendors to determine price reasonableness. The vice president for purchasing at one company said the company obtains cost data from sellers and tries to get information on applicable discounts the vendors give to other companies, particularly if the other customers are competitors.

⁹GAO/GGD-86-99BR, July 8, 1986.

¹⁰An IRMS vendor guide was scheduled for publication in September 1993 but has been delayed.

- The editor of Purchasing magazine told us that larger companies that buy a substantial amount of a product often demand information on production costs or discounts “and they get that information.” He said buyers also frequently talk to each other about the discounts they get.
- A nationally recognized consultant on contract negotiations advises buyers in major U.S. corporations and elsewhere to obtain cost breakdowns as part of the purchasing process. He recommends that buyers “[e]stablish procedures, policies, and legal regulations that prohibit you from dealing with sellers who won’t provide cost breakdowns.” He said when companies become convinced that their long-range interests are in jeopardy, “cost breakdowns quickly become available.”

Therefore, the MAS program’s policy of obtaining discount information or cost and pricing information from prospective vendors seems to be consistent with the commercial practices of at least some companies and with recommended negotiation practices.

In the contract files we reviewed, discount information collected by GSA indicated that vendors give nonfederal customers discounts from their published price lists. The best discounts were sometimes given to dealers, distributors, or OEMs. As we noted in chapter 3, GSA contracting personnel sometimes used those customers’ discounts to negotiate discounts for the government that were better than end-user discounts. GSA’s reliance on standard price lists or end-user discounts during the negotiations of those contracts could have resulted in higher prices for the government.

We also found examples in the contract files in which GSA contracting officials did not target “one-time-only” promotional discounts or special circumstances as the government’s negotiation objective. For example, the vendor in one of the contract files we reviewed said the discount given to one customer was a “special situation” and should not be pursued as the MFC discount. In that situation, the customer and the vendor had an unwritten reciprocal agreement in which the vendor purchased the customer’s manufactured items for use in its products at a discount and the vendor reciprocated with similar discounts. The contracting officer accepted this explanation and did not pursue the vendor’s “special” discount. In another instance, the contracting officer did not pursue the MFC discount for all items in the contract because the MFC discount was granted to a distributor on only one type of product offered to the government and that discount was only on the distributor’s sales to the state of New Jersey. In another contract file, the price negotiation memo indicated that GSA’s comparison of the government’s and other customers’

discounts and terms and conditions was confined to instances in which the products were identical and that reflected the vendor's "normal business practices."

In the contract files we reviewed, there were numerous instances in which GSA found that the vendors did not accurately report their best discounts. For example, one offeror said the best discount it gave to a dealer was 55 percent. However, an audit of that offeror by the GSA OIG revealed "widespread special discounting to dealers who meet competitive pressures," with the discounts ranging from 60.0 percent to 74.5 percent. Another vendor's discount schedule did not include higher-than-disclosed discounts to dealers, state and local governments, corporate accounts, and educational institutions. Still another vendor understated dealer discounts by up to 18 percent.

We did not determine whether companies could easily retrieve information on their best discounts. We suspect that the level of difficulty varies from company to company. A large, decentralized company with limited information processing equipment or experience would probably have greater difficulty obtaining the required information than more centralized companies that are knowledgeable about modern information systems. We believe such data retrieval systems are technically feasible and can be developed at a minimum to moderate cost, depending on the offeror's existing information processing capabilities.

One consultant on contract negotiations told us that vendors' claims that they could not provide information on their best discounts were a negotiating tactic designed to put pressure on the government to relax information requirements. How, he asked, do vendors know how much to charge someone and generate invoices if they do not keep computer records on the discounts they agreed to give their customers?

**Vendors Participating in
Pilot Test Prefer Revised
DSMD**

GSA officials said the results of their pilot test of a revised DSMD may help them address some of the vendors' complaints about MAS data requirements. In the pilot, any prospective vendor that offered the government its best discount was only required to disclose limited information about the customer that received its best discount. If the government was not offered the vendor's best discount, the vendor was required to identify any customer or category of customer receiving discounts equal to or better than the discounts the government was offered. The contracting officers we met with generally supported the pilot

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DSMD requirements and said they had no need for information on discounts that are worse than those offered the government.

A 1992 and 1993 GSA survey of vendors participating in the pilot test indicated that most believed the test data requirements were an improvement over the current requirements.¹¹ Of those respondents expressing an opinion, 83 percent said they found the new DSMD to be "clear," 80 percent said it was "logical," and 77 percent described it as "appropriate." Compared with the previous DSMD, 84 percent said the revised DSMD's instructions were easier to understand, and 68 percent said they preferred the new format. Only 4 percent said they preferred the previous DSMD.

Nevertheless, organizations representing MAS vendors said the pilot test does not address all of their concerns about the data that must be collected. For example, they noted that to identify and certify their best discount, vendors still must search through all of their transactions. They also said the pilot DSMD could require the collection and reporting of more, not less, information. For example, one organization said vendors participating in the pilot would have to report and document all commercial discounts that were greater than those offered to GSA—a standard that is higher than the current requirements.¹²

**Other Reforms in MAS
Data Requirements Are
Possible**

Other reforms to MAS data requirements are also possible. For example, relatively few MAS vendors account for the bulk of MAS sales. The 10 largest MAS vendors in IRMS (about 1 percent of all IRMS vendors) accounted for more than half of the sales of IRMS products in fiscal year 1992 through the MAS program. The top-20 IRMS MAS vendors (about 2 percent of all IRMS vendors) accounted for over 62 percent of all IRMS MAS sales. The top-20 FSS MAS vendors (less than one-half of 1 percent of all FSS MAS vendors) accounted for 43.5 percent of all FSS MAS sales in fiscal year 1992. Given this pattern, GSA could focus MAS data requirements on the relatively small number of vendors that account for the bulk of MAS sales. Data requirements on the majority of vendors with relatively small amounts of

¹¹GSA officials said about 110 of the approximately 300 offerors responding to solicitations in the 5 MAS schedules included in the pilot returned the questionnaire. The offerors were allowed to return the questionnaires anonymously, and participation in the survey was voluntary. Because the response rate was relatively low, the results may not be representative of all vendors who participated in the pilot test.

¹²This is not correct. Vendors in the pilot who do not offer the government their best discount must identify any customer or category of customer with a discount equal to or better than the government's discount. Vendors are not required to disclose each discount.

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MAS sales could be relaxed without posing a substantial risk to the government.

One way to relax MAS data requirements on these smaller vendors could be to require discount information only on their largest customers (in terms of sales volume) within current DSMD customer categories. As we noted previously, vendors have complained that they may have to search through millions of their transactions to discover and disclose their “best” discount. In this proposal, vendors would only have to search the transactions of their 5 or 10 largest customers within each of the 6 DSMD customer categories (dealers, distributors, educational institutions, OEMs, state and local governments, and other). If the vendors’ largest customers received the best discounts, this reduced data collection effort would yield the same information as the current DSMD requirements.

However, this type of data disclosure would not reveal the vendors’ best discounts if the vendors’ best discounts were not given to their largest customers. There is some evidence to indicate that the best discounts do not always flow to the customer who buys the most of a vendor’s product. For example, the contracting officer noted in the price analysis for one of the contracts we examined that

“[i]t appears that there is little correlation between the discount offered to a customer and the customer’s sales volume. Large discounts were given to customers for rather insubstantial sales, mainly for competitive reasons. This is particularly true in the discounts given to dealers. It appears [the vendor] has no standard discounting policy.”

Other studies have also found that vendors’ largest customers do not always get the best discounts.¹³

Several of the vendor representatives we met with supported limiting data requirements to a vendor’s largest customers. They generally viewed it as a “step in the right direction.” However, GSA officials and contracting officers generally opposed limiting the data requirements. They were concerned that because the largest customers do not always receive the best discounts, the government’s negotiating position could be weakened by not obtaining information on these discounts.

¹³Michael V. Marn and Robert L. Rosiello, “Managing Price, Gaining Profit,” *Harvard Business Review*, 70 (Sept.-Oct. 1992), p. 89. An analysis of company prices against account size found “no correlation.”

Vendors and GSA Disagree Regarding Manufacturer Data Requirements

The IRMS solicitation for the microcomputer schedule, issued in September 1992 for the 1993 to 1994 contract year, required dealers to submit certified DSMD from the manufacturers of products the dealers offered to the government for which they had not established commerciality.¹⁴ The solicitation also said dealers who had established a commercial price for the items offered may be required to submit certified manufacturer DSMD if IRMS was unable to determine the reasonableness of the dealer's prices.¹⁵

As we noted previously, a prospective government vendor may be exempt from the statutory requirement to submit cost or pricing data if the vendor can show that the prices offered are based on

"established catalog or established market prices of commercial items sold in substantial quantities to the general public. In order to qualify for this exemption, the terms of the proposed purchase, such as quantity and delivery requirements, should be sufficiently similar to those of the commercial sales that the catalog or market price will be fair and reasonable."¹⁶

Therefore, an offeror must both (1) sell the product in substantial quantities to nonfederal customers at a catalog or market price and (2) have commercial sales with terms "sufficiently similar" to the government's "proposed purchase" of the item to establish a product as commercial. An offeror who does not meet both of these requirements has not established the commerciality of the product and therefore must submit certified cost or pricing data for GSA contracting officers to determine the reasonableness of the product's price.

IRMS officials and contracting officers said that it is difficult for them to establish the reasonableness of prices offered to the government by dealers who have not established the commerciality of the items they propose to offer in the MAS program. Cost or pricing data from dealers consist of what they paid the manufacturer for the product plus the dealer markup. IRMS officials and contracting officers said they have no way of knowing whether the prices paid by these dealers (and, indirectly, by the government) are "fair and reasonable" compared to the prices paid by

¹⁴Commerciality refers to a determination that an item qualifies for an exemption from the requirement to submit cost or pricing data because it has an established catalog or market price.

¹⁵IRMS officials told us that similar provisions will be in the other schedules' solicitations. They said the requirement for manufacturer DSMD had been in solicitations before 1993 to 1994 but was more clearly stated in that solicitation.

¹⁶FAR 15.804-3 (c).

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other dealers or by the manufacturer's other customers. Therefore, they said, they need DSMD from the manufacturer of the product to know what the manufacturer's other customers paid for the product. Using that information, IRMS officials said they can determine whether the dealer's price to the government is fair and reasonable.

IRMS officials said they may also need manufacturer DSMD from dealers who have established the commerciality of a product. The key issue, they said, is whether the contracting officer has sufficient information to determine that the offeror's price is fair and reasonable. They said a dealer may have substantial nonfederal sales of a product at catalog or market prices but all of the dealer's sales are to small customers. If so, IRMS contracting officers have no way of knowing what a large purchaser like the federal government should pay for the product. If the manufacturer sells the product to customers similar to the federal government, the dealer can use manufacturer DSMD to show that its price is fair and reasonable.

Overall, IRMS officials said they may require a dealer to provide manufacturer DSMD for a product unless the dealer had substantial nonfederal sales of the product at catalog or market prices and customers who bought the product in a volume commensurate to the federal government's aggregate purchases from all vendors. For example, if the government expects to buy \$1 million worth of a particular product during the upcoming contract year and three dealers offer to sell that product to the government, IRMS may require each of the dealers to provide certified manufacturer DSMD unless they individually can provide pricing data for commercial customers who bought the product in a volume similar to the government's \$1 million purchase volume.

FSS officials said they also require manufacturer DSMD when MAS products are offered by dealers who have not established the commerciality of the products offered to the government. A 1988 memo from the Director of FSS's Operations Management Division stated that

"cost analysis should **NEVER** be used by itself to justify price reasonableness because it concentrates exclusively on the dealer's cost data. It could lead to significant errors in pricing since this data does not necessarily indicate what the dealer's cost **SHOULD BE**, what the **VALUE** of the items is, or what amount a **PRICE-COMPETITIVE** acquisition would yield [emphasis in original].

"Accordingly, when cost and pricing is required it may be necessary to obtain information from the manufacturer as well as the dealer in order to determine price reasonableness."

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Neither FSS policies nor FSS solicitations require manufacturer DSMD when products are offered by dealers who can establish the commerciality of their products. FSS officials said that this situation does not arise as frequently in FSS as in IRMS because most FSS dealers cannot establish the commerciality of the products they offer. However, the FSS officials said they would obtain manufacturer DSMD even if a dealer had established commerciality if they believed it was needed to establish price reasonableness.

GSA's OIG supports the new manufacturer DSMD requirements, particularly with regard to dealers who have not established the commerciality of their products. The OIG's June 1992 Audit Highlights report noted that the cost and pricing data these dealers disclose consist of the prices paid to the manufacturer along with proposed markups. The OIG said that "[c]ontracting officials have no way to determine whether these prices were arrived at competitively or they have no knowledge of the discount policies and practices of the manufacturers when attempting to determine the reasonableness of prices."¹⁷ Therefore, the OIG said, manufacturer cost or discount data are needed to negotiate fair prices.

Officials in GSA's Office of General Counsel said that there is no legal limit to the information a contracting officer may need to make a determination of price reasonableness (other than that the information must bear a reasonable relationship to the fair and reasonable price determination). They said that the fact that the information may reside with a manufacturer rather than a dealer does not alter the contracting officer's duty to obtain that information. They also said the manufacturer is under no legal obligation to provide this information but should understand that failure to provide the information may lead to no contract award for the manufacturer's products. Where such data are required, GSA asserts the right to audit the manufacturers to verify the accuracy of the discount information they provide.

MAS vendors expressed a variety of concerns about the data requirements GSA has placed on noncontractor manufacturers. At the most basic level, the vendors contended that the requirement of manufacturer DSMD is unreasonable because the dealers, not the manufacturers, are the prospective GSA vendors. The vendors said that requiring discount or cost information from nonofferors is beyond the bounds of legitimate data gathering and that GSA has no legal right to gather such data from manufacturers.

¹⁷OIG Audit Highlights, p. 56.

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Other vendor concerns about manufacturer DSMD requirements were similar to their concerns regarding the general data requirements. The vendors said they do not have the information systems needed to compile the required data; that GSA requires the information in a format unfamiliar to the commercial world; and that GSA should use market research, not discount information obtained from manufacturers, to determine price reasonableness. The vendors were also concerned that the new requirements expand the government's ability to audit these noncontractor manufacturers, giving the government access to proprietary information not necessary for contract negotiations.

Still other vendor concerns focused on the IRMS requirement for manufacturer DSMD from a dealer who has established the commerciality of its product. The vendors argued that IRMS does not need to obtain manufacturer DSMD because the dealer has already established a market price for the product against which the reasonableness of the dealer's price can be determined. According to the vendors, that market price for the item is demonstrated by the dealer's substantial nonfederal sales and sales to customers who buy the product in a volume similar to what the dealer expects to sell to the federal government during the term of the contract. Using the previous example, if one of the three offerors expects to sell \$100,000 worth of the \$1 million aggregate purchases of a product in the upcoming contract year, the vendors said that IRMS should only require that dealer to provide pricing data for a \$100,000 nonfederal customer to demonstrate that it has commercial sales which are "sufficiently similar" to the proposed MAS purchase.

Data we obtained from GSA indicated that most MAS vendors in FSS are manufacturers. In fiscal year 1992, manufacturers accounted for 81.7 percent of all vendors and 92.1 percent of the dollar value of all sales. Dealers are more prevalent in IRMS, and IRMS data indicate that manufacturers are increasingly represented by dealers. In fiscal year 1991, 79 IRMS dealers offered the products of 1,071 manufacturers. By fiscal year 1992, 92 dealers were offering 1,235 manufacturers' products.¹⁸ Some IRMS dealers can demonstrate the commerciality of their products while others cannot. The two vendors with the largest sales volume in the IRMS microcomputer schedule during fiscal year 1992 were dealers who could not demonstrate the commerciality of their products. Their total sales to the government through the MAS program that year were more than

¹⁸These figures indicate the number of dealers offering more than one manufacturer's products. Dealers representing only one manufacturer are not included.

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\$200 million—more than 10 percent of all IRMS MAS sales and more than 30 percent of microcomputer schedule sales.

Some of the contracts we reviewed and the MAS prices we examined indicated that manufacturer DSMD can be necessary to determine price reasonableness. For example, cost or pricing data that one dealer submitted to GSA showed what the dealer had paid the manufacturer for a particular product and that the dealer's markup on that product was relatively modest. The GSA contracting officer did not require the manufacturer of the product to submit DSMD (the solicitation at that time did not clearly require it) but did obtain some information from the manufacturer on its discounts to various types of customers. The manufacturer told the contracting officer that all of its large resellers received the same discount—50 percent—from its list price for the product. Because the manufacturer indicated that the MAS offeror's discount was as good as any dealer's discount and because the offeror's markup was minimal, the contracting officer decided that the offeror's price for that product was fair and reasonable. A MAS contract was therefore awarded to the dealer for that product.

However, we found that the same dealer sold the same product to a state government for 10 percent less than the MAS price both before the award of the MAS contract and throughout the period of the MAS contract. The dealer had gotten a price for the product from the manufacturer for sales to the state before a price increase. The manufacturer maintained that price after the increase by giving the dealer a rebate for all sales to the state. As a result, the dealer paid nearly 14 percent less for the product when it was sold to the state than when it was sold to the federal government.

The GSA contracting officer responsible for renegotiating these contracts asked the manufacturer why this lower price for sales to the state government had not been disclosed to GSA before the award of the MAS contract. The manufacturer reportedly told the contracting officer that GSA had not asked about rebates it gave to dealers, only what discounts it gave to dealers. The manufacturer's rebates to the dealers would have been disclosed if the manufacturer had been required to complete a DSMD sheet. Section III(b) of the DSMD's discount and sales information provision asks whether the company has any "discounts and/or concessions . . . which result in lower net prices than those offered the government" including but not limited to "rebates of any kind."

The manufacturer also told GSA that it did not differentiate among federal, state, or local governments in its discount patterns. However, we found during our price comparisons that dealers that sell to state governments are treated differently than dealers that sell to the federal government. Nearly 3 months after a manufacturer's price increase, dealers that sell to a state government were allowed to buy products at prices that were in effect before the price increase. MAS dealers were not able to buy products at the lower prices. Also, the manufacturer required state dealers to prepay for the products they bought and in return gave the dealers a 4-percent prepayment discount. MAS dealers were not required to prepay and generally did not do so. As a result, the cost of the products to MAS dealers was higher than the price to some state dealers. Certified DSMD from the manufacturer would have disclosed these pricing practices.

Another example of the relevance of manufacturer DSMD was in the same dealer's contract file. The price negotiation memorandum in the contract file indicated that a computer manufacturer did not sell its products directly to private sector end users. Again, the contracting officer did not require and the manufacturer did not submit DSMD sheets to GSA. Instead, the manufacturer provided GSA with written information on its sales and discount practices to various categories of customers. However, this information did not indicate whether the manufacturer sold any products to private sector end users; that type of customer was not mentioned in the information provided to GSA by the manufacturer. We discovered that the manufacturer did, in fact, sell its products to some large private sector end users. If the manufacturer had been required to complete the DSMD sheets, GSA would have known about these sales practices before the negotiation of the MAS contract.

Conclusions

GSA needs information on sales, discounts, and marketing practices from prospective MAS vendors to determine whether the prices of goods and services they offer are fair and reasonable as defined by the MFC standard. Market research should be an important component of GSA's price analysis, but it is unreasonable to expect contracting officers to research market prices for all of the millions of items on the schedules. It is also unreasonable to expect that the contracting officers will discover in public information the vendors' best prices to their most favored customers. A reliance on published prices may result in higher prices to the government.

Although we believe it is appropriate for GSA to obtain information from MAS offerors to determine price reasonableness, we also believe the data

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requirements themselves should be reasonable and consistent with the scope of the price analysis used to establish GSA's negotiation objectives. GSA's pilot DSMD requirements are a first step in achieving these objectives. However, GSA's search for more reasonable data requirements should not stop with the pilot. GSA should continue to try and lessen the data disclosure requirements placed on vendors while protecting the interests of the government. We recognize that some such reductions in the data requirements may prevent GSA from knowing about all of the vendors' best discounts. Some such trade-offs may be necessary, especially in smaller contracts, as the government searches for the appropriate balance between good prices and lessened administrative burdens on vendors.

Data Requirements on
Manufacturers That Are
Not MAS Vendors

Cost or pricing data provided to GSA by dealers who cannot establish the commerciality of their products consist of what the dealers paid for the products plus the dealers' markup. We believe that this information alone may be insufficient for GSA contracting officers to make an affirmative determination of price reasonableness. Therefore, we believe that GSA contracting officers should be able to obtain DSMD from the manufacturer of products offered to the government by dealers who cannot establish the commerciality of their products.

However, GSA contracting officers generally should not need manufacturer DSMD to determine price reasonableness when a dealer has established the commerciality of the products that it offers to the government. GSA should be able to determine the reasonableness of the dealer's prices by comparing the discounts the dealer offers to the federal government to the discounts the dealer gives to comparable customers.

Finally, we believe GSA should be able to verify the accuracy of the information provided by manufacturers through audits. If a manufacturer does not provide the requested information or if the manufacturer refuses to allow that information to be verified, GSA may refuse to place the manufacturer's product on the schedule if it believes that the government is not receiving a fair and reasonable price.

GSA and the vendors disagreed regarding which customers are sufficiently "comparable" to the federal government to allow contracting officers to determine price reasonableness for a product. GSA said a comparable customer is one that buys as much of the product as the federal government as a whole from all MAS vendors. The vendors said a comparable customer is one that buys as much as the offeror is likely to

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sell under its own contract. As we have said in previous reports, we believe that GSA contracting officers should use the government's aggregate buying power to negotiate MAS prices which are as low as possible. Therefore, we believe that it is reasonable for IRMS to seek pricing data for nonfederal commercial customers whose purchase volume for a particular product is comparable to the government's aggregate purchase volume. If the dealer's commercial customers' volume of purchases is not comparable to the government's volume of purchases, GSA could require manufacturer DSMD to validate the dealer's price to the government. If manufacturer DSMD was not provided, GSA could deny the dealer a contract with regard to that product.

However, we believe it is inconsistent for IRMS to view the government as one customer and then award more than one contract for the same IRMS item. For example, if the government as a whole bought \$1 million worth of a particular IRMS product through the schedules in the past year and three prospective vendors offered to sell that product for the upcoming year, IRMS should not require each of the three offerors to show it a \$1 million nonfederal customer and then award a contract to all three of the offerors. None of the three awardees is likely to garner the entire \$1 million worth of business for that product in the MAS program. That being the case, IRMS should not require each prospective vendor to provide pricing data for a \$1 million nonfederal customer to establish the reasonableness of its prices to the government.

At least two alternatives exist to resolve this inconsistency. If IRMS decided it wanted to view the "comparable customer" as one that buys as much of a product as the federal government as a whole expects to buy, IRMS should award only one contract for each product. In the above example, IRMS could require each of the three prospective MAS vendors to show what price it charged a \$1 million customer as long as each of the three offerors had a chance to gain the federal government's entire \$1 million worth of business for that product. The three offerors would, therefore, compete for the right to sell that product to the government through the MAS program.

On the other hand, if IRMS decided it wanted to continue to award more than one contract per item, IRMS should view the "comparable customer" as one who buys as much as the government expects to buy from the prospective vendor through the MAS program in the upcoming contract year. If an offeror is expected to sell only \$100,000 of the \$1 million in total projected federal MAS purchases of a product, IRMS should only require that

offeror to provide data on a nonfederal \$100,000 customer. The "comparable customer" may vary from offeror to offeror depending on each offeror's expected MAS sales.

Several other options probably exist to resolve this issue. However, we are not making a recommendation on this issue because it is beyond the scope of our review. Neither have we identified the implications of the adoption of any of these options on MAS purchasing. However, GSA should consider these implications as they make changes in the MAS program's data requirements and contracting procedures. For example, if IRMS were to award only one contract per item, agency transaction costs could rise if different vendors hold the contracts for products that, in the past, could have been purchased at a single location using a single purchase order. On the other hand, prices for individual products could decrease as a result of dealer competition to sell a product on the schedules. That decrease in prices could be more than enough to offset any increase in agency transaction costs.

Recommendations

We recommend that the GSA Administrator test alternative MAS data requirements to ensure that those requirements are clear, reasonable, and the minimum necessary to establish price reasonableness. We also recommend that the GSA Administrator revise MAS policies to recognize that contracting officers may need to obtain manufacturer DSMD when a product is offered by a dealer who cannot establish the commerciality of its products. However, MAS policies should also state that GSA will generally not require manufacturer DSMD when a product is offered to the government by a dealer who can show product commerciality.

GSA and Vendor Comments and Our Evaluation

GSA Comments

In written comments dated July 2, 1993, the Acting GSA Administrator said that GSA agreed with the factual findings in our report and said GSA would use the information we developed to improve the MAS program. However, she took no position regarding our conclusions and recommendations pending the arrival of GSA's Administrator designate.

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However, GSA has proposed changes to the GSA Acquisition Regulation which can result in reduced MAS data requirements.¹⁹ The proposed rule would extend the pilot DSMD requirements to all solicitations. In those requirements, a prospective MAS vendor who offers the government its best discount to any customer need only provide discount information concerning the nonfederal customer who receives that best discount. A prospective vendor who does not offer the government its best discount must disclose discount information for all customers or customer categories that receive discounts that are equal to or better than those offered to the government. Vendors who participated in the pilot test and responded to a GSA questionnaire generally believed the revised DSMD was clear and appropriate.

However, we believe other changes to MAS data requirements are also possible. GSA should continue to try to clarify and reduce the data requirements placed on MAS offerors while protecting the interests of the government. We also believe MAS policies should reflect our recommendation regarding manufacturer DSMD.

Vendor Comments

The vendors generally disagreed with our recommendations. They did not agree that the MAS pilot test of the new DSMD represented a step in the right direction. The vendors said it was a redefinition of MAS negotiation objectives and that the data requirements under the pilot could be even greater than they are in the current DSMD. They also said that our suggestion that GSA could reduce MAS data requirements by allowing certain vendors to provide information on only their largest customers was contrary to our recommendation that GSA focus on vendors' best discounts. They pointed out that some vendors do not give their best discounts to their largest customers.

We believe the pilot DSMD clarifies MAS data requirements and has the potential to reduce the amount of data that must be provided for at least some vendors. We recognize that some vendors do not give their largest customers their best discounts, and therefore the government may not know about these discounts. We believe some such trade-offs may be necessary as GSA tries to balance the vendors' and the government's interests in the MAS program.

The vendors have several concerns about our recommendation regarding manufacturer DSMD. They do not believe that manufacturer DSMD are

¹⁹58 Federal Register 32085 (1993).

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necessary at all, even from a dealer who cannot show that its products are commercial. The vendors said GSA should be able to use the cost data they submit to validate their prices. As noted above, we believe such cost data may be insufficient to determine price reasonableness.

Alternatively, they argue that GSA could use the prices of dealers who have established product commerciality to validate the prices of dealers who have not established product commerciality. We believe that this is very similar to the "benchmarking" practice used in the MAS program before the 1982 policy statement that we criticized in our 1979 report.²⁰ It is not clear how GSA would know which vendor's price would be the appropriate benchmark. Furthermore, because the terms and conditions as well as the manufacturer's cost to the dealers vary from dealer to dealer, we do not believe that one dealer's price can be used to validate another dealer's price. Each one must be considered on its own merits.

Vendors are also concerned that our recommendation will make the field of competition uneven in the MAS program. Because certain manufacturers have refused to provide DSMD and because dealers who can show product commerciality will not have to provide this information, dealers who cannot show product commerciality will not be able to offer certain manufacturers' products through the MAS program. We believe that a distinction between dealers who can and cannot establish product commerciality is necessary because of the differences in the information they provide to GSA. Dealers who can show product commerciality can tell GSA the price that they offer to a number of nonfederal customers whose terms of purchase are similar to the federal government's proposed purchases. Dealers who do not have a sufficient number of nonfederal customers or customers who are sufficiently similar to the federal government cannot provide this information.

²⁰GAO/PSAD-79-71, May 2, 1979.

Prior GAO Reviews of the MAS Program

We have previously reported on various aspects of the Multiple Award Schedule (MAS) program's operation. In 1977, we reported that some contractors charged the government more for their products than they charged commercial customers.¹ We said these higher prices probably occurred because the Federal Supply Service (FSS) did not have procedures for considering the total purchases expected under a contract when evaluating the prospective contractors' offers. As a result, FSS did not obtain the volume discounts for the government that were normally available to other customers. We recommended that FSS develop procedures to enable it to obtain discounts given by contractors to other customers buying large quantities of goods. We also found that contractors' proposals were rarely independently audited and that some of the sales and discount information submitted was not accurate, current, and complete. We recommended that FSS increase its verification of contractors' proposals and its audits of completed contracts. Finally, we said the General Services Administration (GSA) needed to adopt the concept that it represented the government as an entity rather than as individual purchasing units.

In 1979, we reported on a comprehensive audit of the MAS program and concluded that the MAS program "cannot be effectively managed in its present form."² We said that

- there was little or no assurance that suppliers offered items at prices that reflected the government's volume purchases;
- there were too many items on the schedules and too many suppliers of similar items;
- many items of a questionable nature were available for purchase through the schedules, including sauna baths and toys;
- GSA did not have the capability to ensure that the government's interests were protected; and
- the government sometimes paid more for identical items than other purchasers and got less favorable warranty and payment terms.

We made eight specific recommendations to GSA to improve the MAS program, all of which GSA agreed to adopt. Among other things, we recommended that GSA develop criteria for determining which items should be procured competitively and which should be purchased through the MAS program. For those items that were to remain on the schedules, we

¹Federal Supply Service Not Buying Goods at Lowest Possible Price (GAO/PSAD-77-69, Mar. 4, 1977).

²Ineffective Management of GSA's Multiple Award Schedule Program: A Costly, Serious, and Longstanding Problem (GAO/PSAD-79-71, May 2, 1979).

recommended that GSA improve contracting procedures by, among other things, using the higher discounts offered and limiting the number of contractors receiving awards. We also said GSA needed to improve the training of contracting officers, increase the emphasis on GSA's audits of vendors, and define overall management responsibility for the MAS program.

In 1980, we reviewed the actions GSA had taken to improve the MAS program.³ We concluded that although GSA had taken some steps to respond to our recommendations, it had not solved the program's basic deficiencies identified in our 1979 report. We recommended that Congress place GSA under a mandatory timetable to improve the MAS program and require GSA to report on the status of its improvement actions. We also recommended that GSA intensify its efforts to comply with our 1979 recommendations and take other steps to improve MAS program operation.

In 1986, we surveyed GSA's price negotiations to determine whether GSA was following existing laws and regulations and whether GSA was obtaining fair and reasonable prices.⁴ We reported that GSA was generally negotiating within the degree of contracting officer discretion allowed by the regulations and that GSA was generally getting at least MFC pricing in the contracts we reviewed. We did, however, note several areas for improvement in both compliance with contracting procedures and the attainment of better prices. For example, we said contracting officers needed to fully comply with existing regulations regarding the provision of cost or pricing data by vendors in support of their proposed prices. We also said GSA should ensure that negotiators attempt to obtain the best possible prices.

Two of our reports in 1992 focused on the ordering practices of agencies. The first report focused on whether MAS orders above \$25,000 were publicized, described, and documented in accordance with statutory and regulatory requirements.⁵ We discovered problems in each of these areas and recommended the revision of federal regulations to improve operations. The second report examined MAS purchasing practices and reported that those practices did not ensure that agencies always obtained

³Effectiveness of GSA's Actions to Improve the Multiple Award Schedule Program (GAO/PSAD-80-53, Aug. 22, 1980).

⁴GSA Procurement: Are Prices Negotiated for Multiple Award Schedules Reasonable? (GAO/GGD-86-99BR, July 8, 1986).

⁵Multiple Award Schedule Purchases: Improvements Needed Regarding Publicizing Agencies' Orders (GAO/NSIAD-92-88, May 12, 1992).

Appendix I
Prior GAO Reviews of the MAS Program

products at the lowest price.⁶ Most users' requests for specific products were filled by procurement offices without determining if other MAS products could satisfy their requirements at a lower cost. We made several recommendations to ensure that agencies' MAS orders complied with statutory requirements and that GSA and the agencies improved MAS program management.

⁶Multiple Award Schedule Purchases: Changes Are Needed to Improve Agencies' Ordering Practices (GAO/NSIAD-92-123, June 2, 1992).

Objectives, Scope, and Methodology

The objectives of this review were to determine (1) the reasonableness of MAS prices for selected items, (2) what should be GSA's MAS negotiation objectives, and (3) what data GSA should require MAS offerors to provide so that GSA can achieve its negotiation objectives.

Methodology

We used a variety of methods to accomplish these objectives, including interviews, focus groups, contract file reviews, data analysis, and reviews of some of our previous reports and some reports from the GSA Office of the Inspector General (OIG).

Interviews

We interviewed a number of individuals representing organizations involved in the administration of the MAS program or affected by the program to determine what they believed the government's negotiation objectives and data requirements should be. Those individuals interviewed at GSA included the Associate Administrator for Acquisition Policy, the Acting Director of MAS Program Management, the Assistant Inspector General for Auditing, the Director of the Federal Supply Service (FSS) Acquisition Management Center, the Information Resources Management Service (IRMS) Schedules Division Director, and contracting officers and other contracting personnel from both FSS and IRMS. Vendor group representatives interviewed were from the Coalition for Government Procurement, the Computer and Business Equipment Manufacturers Association, the Association for Information and Image Management, the Computer and Communications Industry Association, the Information Technology Association of America, and the Software Publishers Association. We also interviewed representatives from the Office of Federal Procurement Policy, the Department of Defense, and the American Bar Association's Section on Public Contract Law. We asked these representatives their views regarding the MAS program's negotiation objectives, data requirements, and other issues. We also obtained documentation from many of these groups regarding the MAS program's operations.

At the conclusion of these interviews, we met with representatives of most of these organizations again to ensure that we had properly characterized their views and to obtain their reactions to our preliminary conclusions and recommendations. After these meetings, several of the organizations provided written comments elaborating their views. During the

preparation of the draft report we met with the vendors again to obtain their views and comments regarding our conclusions and recommendations.

Focus Groups

We held three focus group discussions with MAS contracting personnel to learn how MAS contracts were negotiated. The personnel were from FSS headquarters offices, one FSS regional office (region VII in Fort Worth, TX), and IRMS. Contracting officers and price analysts were selected by GSA for participation in the focus groups, with each group ranging in size from seven to eight members. At FSS headquarters, contracting officers participating in the focus groups represented various product groups in the Washington-area offices, including furniture, scientific equipment, and automobiles. In IRMS and the FSS regional office, virtually all warranted contracting officers were included in the focus groups. Participants completed a brief questionnaire at the start of the focus groups, and their responses were used to guide the discussions. We asked the contracting staff what procedures they followed as they negotiated MAS contracts and their opinions regarding MAS negotiation objectives, data requirements, and other issues.

Contract Documentation Review

We also reviewed negotiation documents for a limited number of MAS contracts to determine what price analysis and price negotiation objectives were used in different GSA units. To select the contracts for review, we first identified the schedules within both IRMS and FSS with the highest sales volume in fiscal year 1991.¹ We then selected the contracts with the highest sales volume in fiscal year 1991 within each of the identified schedules. In IRMS, all contracts within the targeted schedules over \$50 million were selected. In FSS, all contracts within the targeted schedules over \$25 million were selected. A total of 14 contracts were selected for review, 6 from IRMS and 8 from FSS.² Within IRMS, four contracts were from the mainframe computer schedule, and the remaining two contracts were from the microcomputer schedule. Within FSS, the

¹Fiscal year 1991 was the targeted year because GSA contracting officers were using some of the 1992 contracts to negotiate the 1993 contracts at the time we started our review. One FSS schedule was eliminated from consideration because it was in a regional office we did not intend to visit.

²A total of nine FSS contracts were initially selected. However, when FSS officials pulled the contract files we identified, two of the contracts were found to be below the \$25 million threshold. One additional contract was discovered above the threshold. (FSS officials said that the FSS data used to select the contracts were in error.) Therefore, a total of eight FSS headquarters contracts were examined.

contracts were drawn from the copier, lab equipment, electronic lab equipment, and office furniture systems schedules.

Because we held focus group discussions in the Fort Worth regional office of FSS, we wanted to review contracts from there as well. However, contract files from that office had to be selected separately because the sales volume for schedules and contracts handled by that office were generally smaller than the schedules and contracts at FSS headquarters. We identified the three schedules in the region with the highest sales volume in fiscal year 1991 and asked FSS officials in the region to select the largest contracts within each schedule in that year. The three contracts were from the law enforcement equipment, food service, and athletic and recreation schedules.

The documentation we examined regarding each contract included prenegotiation memos, price negotiation memos, Discount Schedule and Marketing Data (DSMD) sheets, recommendations for award, and preaward audit reports. After reviewing the documentation, we interviewed some of the contracting personnel who worked on those contracts to determine more clearly how they were negotiated and to inquire why certain steps were or were not taken. In the document reviews and the interviews, we attempted to identify GSA's initial negotiation objective for each contract, the discounts that were negotiated, and how federal/nonfederal differences in terms and conditions were considered by GSA contracting personnel.

Price Comparison

To determine the reasonableness of MAS prices, we compared the prices of selected items on the FSS and IRMS schedules with commercial prices and the prices paid by selected state governments for the same items. FSS and IRMS officials said they did not have data to allow random selection of particular items or empirical selection of top-selling items. Therefore, we asked FSS and IRMS officials to select items that they believed were their 10 top sellers in each service in fiscal year 1992 (the most recent year for which data were available). Five of the items initially selected by FSS officials were Xerox products. For greater product variability, we asked FSS officials to select an additional five items. Therefore, a total of 25 items were selected for price comparison, 10 from IRMS and 15 from FSS.

Officials in FSS and IRMS identified the vendors authorized to sell these items on the schedules and provided price lists or other information to show these vendors' prices for the items as of October 1992. Prices were

subsequently checked in December 1992 to determine whether they had changed. If so, the lowest MAS price was used. In FSS, only one vendor can generally be on the schedules for a particular item. However, in IRMS a number of vendors can receive contracts to sell an identical item, and their prices can vary. If prices for IRMS items varied because of multiple vendors, we used the lowest vendor price as representative of the MAS price.

Commercial prices for these top-selling MAS items were determined by contacting non-MAS vendors and asking what their regular (nonsale) prices were to the general public for the particular items in question during the October through December 1992 time frame. Commercial prices also represented the vendors' prices for a single item (e.g., a single copier or a single software package) without a quantity commitment. Non-MAS vendors were selected by reviewing metropolitan Washington, D.C., telephone book listings of vendors for those products and product-related periodical advertisements.

State prices for the items were determined by contacting state purchasing offices and asking whether they bought the items and, if so, their costs for the items. State governments were judgmentally selected based on their proximity to Washington, D.C., and other factors. Prices for at least one of the top-selling products were obtained from 10 states: California, Georgia, Illinois, Maryland, Massachusetts, New York, Texas, Utah, Virginia, and Washington.

Some of the terms and conditions of sale in the states we contacted were not markedly different than the terms and conditions of the MAS program. For example, the states generally did not commit to buy a specific amount of the products involved, there were usually multiple delivery points in the states, and the vendors paid for the delivery of the items to state users. In some states, more than one vendor was authorized to sell to the state (as in the MAS program). In other states, certain vendors won exclusive rights to sell the item to the state.

We decided that for each item, we needed at least two commercial prices to report commercial price comparisons and two state government prices to report state price comparisons. Some of the items were not sold by two non-MAS vendors we contacted or bought by two of the states we contacted. In those cases, commercial or state prices were not reported for those items.

MAS Program Data

We also obtained data on MAS program activity in recent years from various sources. The Acting Director of MAS Program Management provided information on the number of MAS contracts and sales in fiscal year 1981, and we compared that information with data we received from IRMS and FSS for fiscal year 1992. IRMS provided information on MAS sales figures as well as the number of offers received in response to MAS solicitations, MAS contracts, and line items on the schedules (i.e., individual prices) for fiscal years 1989 through 1992. FSS provided information on the number of MAS offers, contracts, and vendors for the same period.³

Scope Limitations

The scope of this review was limited in several ways. First, the review did not address all vendor complaints or concerns about the MAS program. For example, it did not address concerns about the administration of the price reduction clause in MAS contracts or how to get new products on the schedules more quickly.

Also, some of the methodologies that we employed in this review did not permit us to extrapolate all of our findings to the entire MAS program. For example, the contracts we reviewed were not chosen at random, so we cannot speak about all such contracts. A random sample of MAS contracts of sufficient size to allow extrapolation of our conclusions to all of the more than 6,600 MAS contracts would have required us to review several hundred contracts. Such a review would have taken many months to complete and would not have added greatly to our findings, as we were primarily interested in determining how MAS contracts were negotiated in general. The limited number of contracts that we reviewed provided those insights. Also, the sizes of the contracts we reviewed make our findings important even if the results are not extrapolated to other contracts. Individual contract values ranged from less than \$4 million to nearly \$700 million. The total value of the 17 contracts reviewed was more than \$2.5 billion.⁴

The results of the MAS/commercial and MAS/state price comparisons also cannot be extrapolated beyond the information provided. The MAS items were not randomly selected and included only 25 of the nearly 2 million products on the schedules. Non-MAS commercial vendors and states whose

³Some information was available only from either FSS or IRMS. For example, IRMS did not collect information on the number of vendors on the schedules. FSS did not collect information on the number of line items in the schedules.

⁴Some of the contracts were multiyear contracts. The dollar figures reported here are for the terms of the contracts, not annual figures.

not represent the best prices available for the products. Despite these limitations, we believe that the information provides some perspective on the competitiveness of MAS pricing. Also, because GSA believed these items were top-selling MAS items, it is particularly important that the government's prices for these products be as low as possible to ensure that unnecessary costs are not incurred.

Because there are no generally agreed upon criteria for what constitutes "appropriate" MAS negotiation objectives and data requirements, our conclusions and recommendations are based on what we believe to be appropriate for the government and the vendors. Those conclusions are based on the results of this review as well as prior reviews of the MAS program. We did not validate the information we obtained from GSA regarding the number of MAS contracts, offers, vendors, or MAS sales figures.

Comments From GSA



Administrator
General Services Administration
Washington, DC 20405

July 2, 1993

Mr. Johnny C. Finch
Assistant Comptroller General
General Accounting Office
Washington, DC 20548

Dear Mr. Finch:

Thank you for affording the General Services Administration (GSA) an opportunity to review the draft General Accounting Office (GAO) report entitled "MULTIPLE AWARD SCHEDULE CONTRACTING: Changes Needed in Negotiation Objectives and Data Requirements."

The draft report provides a comprehensive assessment of GSA's Multiple Award Schedule (MAS) program pricing policies and practices and related data requirements. GSA agrees with the report's factual findings and will use the information developed by GAO to further improve the program.

The draft report also makes a number of specific recommendations to the GSA Administrator. As you know, GSA's Administrator designate is not yet on board and has not had an opportunity to fully review the draft report and consider its suggestions. Please know, however, that both the MAS program and the report's recommendations will be a top priority on the Administrator designate's agenda. GSA appreciates the efforts of the GAO audit team and looks forward to working with GAO to ensure the effectiveness of the MAS program.

Sincerely,

Julia M. Stasch
Acting Administrator

Federal Recycling Program Printed on Recycled Paper

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