

“High Risk” Areas In GSA Schedule Contracting – Practical Strategies For Compliance

Contractors have been put on notice that they can expect increased scrutiny of their General Services Administration (“GSA”) Multiple Award Schedule (“MAS”) contracts by the GSA Office of Inspector General (“OIG”), the Government Accountability Office and Congress, as well as GSA contracting personnel. And while MAS contracts often continue to be the single most important sales vehicle for companies selling commercial items and services to the federal government, the business risks associated with MAS contracts, including the very high penalties that have been assessed against MAS contractors for unintentional violations, mandate that companies get their MAS contract houses in order as quickly as possible. This course, taught by instructors with both the practical and legal experience needed to assist your company directly, is designed to help you fix existing problems before they attract the attention of government oversight personnel and to avoid future problems when your MAS contract comes up for administrative review or extension. Whether it is a problem with initial pricing disclosures, on-going price reductions, or compliance with statutory requirements relating to competition or trade agreements, this course will provide you with practical strategies to avoid the penalties and unwanted publicity that can result from these common MAS contract compliance problems. In the current environment, there is no substitute for ensuring compliance with statutory, regulatory, and contractual compliance.

I. Introduction

A. Scope Of GSA’s MAS Program - Who And What Does It Cover

B. Areas Of Focus By Government Investigators And Auditors

1. Most favored customer pricing and pricing disclosures and certifications
2. Competition requirements and scope restrictions
3. OIG pre-award pricing disclosure audits
4. Contract systems audits
5. Defective pricing audits and other post-award audits

C. Understanding The Audit Process

1. Pre-award audit by OIG
2. Post-award audit by OIG
3. Contract systems audit by FAS analysts

D. Government Claims

1. Civil False Claims
2. False Statements
3. Defective Pricing

E. Necessary Internal Business Controls

1. Monitoring systems and procedures
2. Training
3. Sales force coordination with contract and finance functions

F. High Risk Areas

1. Understanding the basic requirements
2. Problem areas
3. Recommended actions

II. High Risk Area # 1 - Commercial Sales Practices (“CSP”) Disclosures

A. The Requirement

1. Mandatory pricing and sales/discount disclosures by customer/customer type
2. Initial contract award
3. Each 5-year contract extension
4. Understanding “current, accurate and complete” certification
5. Reseller pricing disclosure rules:
 - a. “Substantial sales” exception to providing manufacturer CSPs
 - b. Manufacturer product/pricing sheets
 - c. Defining how the reseller’s “acquisition cost” is measured
 - d. Defining when the reseller’s “acquisition cost” is measured

B. Problem Areas

1. Incomplete research of sales practices and sales transaction data
2. Use of generic customer types vs. actual customer categories
3. Undisclosed non-standard discounts
4. Unexplained numeric discount information
5. Manufacturer rebates and “big deal” discounts

C. Steps to Avoid Problems

1. Review of internal pricing policies and procedures
2. Review of contracts and sales data
3. Involvement of sales and bid desk executives
4. Archive for pre-award “due diligence” efforts
5. Documented practices for standard and non-standard discounts
6. Conforming CSP customer designations
7. Non-standard discounts excluded from application of the PRC
8. Rebates and “big deal” discounts exclude from “acquisition cost”
9. Certification to “current” and “accurate” but not “complete”

III. High Risk Area # 2 - Price Reductions Clause (“PRC”)

A. The Requirement

1. “Tracking” (benchmark) customers
2. Benchmarking commercial list price and federal customers
3. Trigger requirements
4. Model contract clause
5. Final Proposal Revision (“FPR”) letter
6. Audit process: Pre- and Post-Award

B. Problem Areas

1. Failure to monitor sales transactions with tracking customers
2. Use of generic customer category descriptions
3. Reliance on outdated or inaccurate GSA pricelists
4. Untrained sales staff

C. Steps to Avoid Problems

1. Review proposal and award documents for correct tracking customers and discounts
2. Realistic tracking customers
3. Clarify definitions of tracking customers
4. Alternative PRC compliance mechanisms
5. Exclusions to PRC application
6. Price and discount monitoring procedures for triggering events
7. Internal pricing policies and controls

IV. High Risk Area # 3 - Trade Agreements Act (“TAA”)

A. The Requirement

1. TAA prohibitions on goods and services from non-designated countries
2. TAA designated country list and FAR TAA Certificate
3. “Substantial Transformation” test
4. “End Product” definition
5. TAA applicability at contract/order level?
6. TAA applicability to services
7. TAA investigations and penalties

B. Problem Areas

1. Place of manufacture of commercial items
2. Change of country of origin

3. Multiple countries of origin
4. High risk product categories
5. Internal company systems lack of information
6. Reselling from distribution without certifications or compliance

C. Steps to Avoid Problems

1. Procedures that monitor and update country of origin status
2. Archive for historical country of origin information
3. Manufacturer certification and indemnification
4. Annual reviews

V. High Risk Area #4 - Unapproved Item Sales

A. The Requirement

1. Statutory status of MAS program
2. Competition requirements for non-MAS items and services
3. Notice requirements for non-schedule items and services

B. Problem Areas

1. Failure to educate sales staff on current MAS-approved items
2. Lack of procedures to distinguish approved and unapproved items
3. Reliance by sales staff on outdated MAS pricelists
4. Infrequent modification submissions
5. Delayed GSA approval of modifications
6. "Mixed" quotes and proposals

C. Steps to Avoid Problems

1. Internal identification procedures for currently approved MAS items
2. Regular MAS contract modifications
3. Procedures to identify unapproved items in quotes
4. Creation of automated order entry system for approved and unapproved items

5. Acceptance of orders that identify open market items
6. Website identification of approved and unapproved items

VI. High Risk Area #5 - Employee Qualifications - Services

A. The Requirement

1. Structure of SINs for hourly and daily service offerings
2. GSA-approved labor categories identify employee requirements
3. Employees billed must meet labor category requirements
4. Compliance is regularly examined

B. Problem Areas

1. Failure to establish procedures to supply qualified personnel
2. Use of labor categories and definitions from other sources
3. Use of outdated and incomplete resumes
4. Failure to archive resumes

C. Steps to Avoid Problems

1. Internal procedures to verify personnel experience and labor categories
 - a. Procedures to collect, verify, update, and archive employee resumes
2. Regular examination and modification of labor categories

VII. High Risk Area # 6 – Industrial Funding Fee (“IFF”) Payments

A. The Requirement

1. 0.75% contract usage fee charged to MAS ordering agencies
2. IFF funds GSA’s operation of MAS program
3. MAS contractors collect IFF from ordering entities and remit to GSA
4. MAS items subject to IFF
5. No IFF on “open market” items and travel
6. Regularly audited

7. Contractor burden to prove MAS item orders not subject to IFF

B. Problem Areas

1. Use of commercial order entry system to identify MAS orders
2. Inaccurate data entry by sales and sales operations staff
3. 3rd-party sales reports from MAS dealers and lease financing companies
4. Contractor Teaming Arrangements (CTAs)
 - a. MAS CTA vs. traditional Prime/Sub relationship
 - b. CTA member confusion over report and pay IFF
5. Blanket Purchase Agreements (BPAs)
6. “Stale” lists of agreements subject to IFF
7. Credit card purchases of MAS items

C. Steps to Avoid Problems

1. Systematic update of new agreements subject to IFF
2. Procedure for booking MAS orders with correct identifier
3. Procedure to obtain and verify 3rd-party MAS contract sales reports
4. Consistent CTA payment rules and procedures to capture CTA and BPA sales
5. Procedure to capture MAS credit card orders
6. Quarterly review of raw sales data
7. Procedure to document contractual basis for non-MAS purchase of MAS items
8. Procedure to preserve and archive IFF calculation efforts