



Office of Audits
Office of Inspector General
U.S. General Services Administration

Applicability of Price Reductions Over the Maximum Order Threshold

*Report Number A130068/Q/3/P13002
April 26, 2013*



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DATE: April 26, 2013

TO: Thomas A. Sharpe, Jr.
Commissioner, Federal Acquisition Service (Q)

FROM: James M. Corcoran 
Regional Inspector General for Auditing, Mid-Atlantic Field Office (JA-3)

SUBJECT: Applicability of Price Reductions
Over the Maximum Order Threshold
Report Number A130068/Q/3/P13002

This report presents the results of our audit of the applicability of price reductions on Multiple Award Schedule orders over the maximum order threshold (maximum order).

The objectives of this audit were to advise the Federal Acquisition Service (FAS) of a conflict in the interpretation of the General Services Administration (GSA) contract clause I-FSS-125, Requirements Exceeding the Maximum Order, and the impact the contractors' interpretation has on GSA pricing.

We identified two vendors who claim the plain language of contract clause I-FSS-125 does not require them to provide price reduction discounts to GSA orders over the maximum order. We calculated these vendors have failed to pass on over \$100 million in price reductions for GSA orders over the maximum order. GSA disagrees with the vendors' interpretation which can lead to the illogical conclusion that larger government orders are entitled to lesser discounts than smaller government orders. Our audit also disclosed the clause language is still present in some contracts. While we concur with GSA's position, the Agency needs to publish its interpretation of this clause and remove the clause language from existing contracts.

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

If you have any questions regarding this report, please contact me or any member of the audit team at the following:

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On behalf of the audit team, I would like to thank you and your staff for your assistance during this audit.

Background

The GSA OIG, Office of Audits, has identified a vendor practice of not applying price reduction discounts to schedule orders over the maximum order. This occurred because vendors claim the plain language of GSA contract clause I-FSS-125, Requirements Exceeding the Maximum Order,¹ exempts schedule orders over the maximum order from the Price Reductions clause (PRC). This practice can result in Multiple Award Schedule (schedule) orders exceeding the maximum order receiving a less favorable discount than orders below the maximum order.

The specific provision of I-FSS-125 cited by vendors is:

(b) Vendors may:

(1) offer a new lower price for this requirement (the Price Reduction [sic] clause is not applicable to orders placed over the Maximum Order in FAR 52.216-19.)

GSA disagrees with the vendors' interpretation of I-FSS-125, and we concur with the Agency's interpretation. GSA officials advised us that government sales above the maximum order are eligible for all PRC discounts, and the intent of the parenthetical statement in I-FSS-125 was to reiterate that no sales to the federal government "trigger" the PRC, regardless of whether or not those sales are above the maximum order. They also stated that any interpretation to the contrary leads to the illogical conclusion that larger government orders are entitled to lesser discounts than smaller government orders.

GSA issued Acquisition Letter FC-95-6, dated October 11, 1995, which incorporated I-FSS-125 into Federal Supply Schedule contracts. This letter was issued as guidance for placing orders over the maximum order.² GSA also issued Procurement Information Bulletin 96-8 on March 29, 1996, to explain the impact of the new maximum order provision, that sets an order dollar amount at which point the "ordering activity may find it advantageous, due to the size of the order to contact vendors for a reduced price."³ Both documents state the 1994 change to the PRC prevented high-discount government sales from triggering automatic PRC discounts to all other government sales. The intent of these changes was to encourage government agencies to seek additional discounts for orders over the maximum order, and to assure vendors they would not be penalized for providing additional discounts.

¹ A maximum order is established for all schedule contracts. When an order exceeds this level, the ordering activity is encouraged to request a lower price. For example, the maximum order for Information Technology Equipment is \$500,000. The vendor has five days to reject an order over this level.

² The Acquisition Letter was issued in response to the October 1994 changes to the PRC, which allowed vendors to provide reduced prices to federal customers without triggering a government-wide price reduction.

³ The maximum order replaced the maximum order limitation, which limited the dollar amount of an agency order under a schedule contract.

We also identified that clause I-FSS-125 language is still being incorporated into schedule contracts. A vendor asserted that even though GSA canceled clause I-FSS-125 in December 2004,⁴ the clause was not removed from the solicitation refreshes until June 2008.⁵ Further, the vendor asserts the cancelation was not distributed (or available online) to contractors, so they were not aware the clause had been canceled. Finally, the vendor asserts that they were not put on notice of the change because even that refresh, while failing to include the clause, also failed to indicate that the clause was removed.

Results

We identified two vendors that have not provided price reductions on schedule orders in excess of the maximum order. These vendors have failed to pass on over \$100 million in price reductions for GSA orders over the maximum order. Both vendors cite clause I-FSS-125 as the basis for not providing these price reductions.

Our examination found no evidence that GSA intended for government orders above the maximum order to not receive price reduction discounts. In fact, GSA's intent was to put schedule vendors on notice that they could accept orders over the maximum order and provide additional discounts on those orders without penalty. However, vendors have asserted that the language used in the clause did not clearly convey this. Further, efforts to remove the clause from the schedule contracts were not adequate to ensure the clause and its related provisions were removed from all schedule contracts.

Our audit also showed seven schedule contracts still had the I-FSS-125 clause language in the contract documents after GSA canceled the clause. Our audit sample consisted of 27 contracts, from ten schedules. Although GSA canceled clause I-FSS-125 in December 2004, our audit determined it was not removed from one solicitation until June 2008.⁶ In addition, the clause language survived and currently remains in some schedule contracts.⁷

We did not determine how many other schedule vendors share this same interpretation of the I-FSS-125 clause language, and are thereby not providing price reduction discounts to GSA schedule orders over the maximum order. However, as long as either the clause or its surviving language remains in schedule contracts, agencies using these contracts may not be receiving the intended benefit of price reduction discounts for orders over the maximum order.

⁴ Federal Supply Service Clause Manual, Change No. 56, dated December 2004, canceled clause I-FSS-125.

⁵ GSA periodically issues schedule "solicitation refreshes" to add, delete and/or update solicitation clauses.

⁶ The solicitation referenced is the Schedule 70 (Information Technology) Solicitation FCIS-JB-980001-B, Refresh No. 22, dated June 6, 2008.

⁷ Clause I-FSS-125 is not explicitly included in the contracts; however, language from the clause is still present.

Recommendations

We recommend that the Commissioner of the Federal Acquisition Service:

- (1) Immediately review all schedule contracts to determine if I-FSS-125 clause language is still incorporated into any contracts, and if so take steps to remove it.
- (2) Publish GSA's interpretation of I-FSS-125 clause language that government orders above the maximum order are entitled to price reduction discounts.

Management Comments

On April 19, 2013, the Federal Acquisition Service concurred with the recommendations presented in this report. Management's written comments to the draft report are included in their entirety as **Appendix B**.

Appendix A – Purpose, Scope, and Methodology

Purpose

This audit was conducted as a result of our recent Multiple Award Schedule audit activity.

Scope

The scope of the audit was limited to determining whether clause I-FSS-125 or related language is still present in GSA schedule solicitations and contracts.

Methodology

To accomplish our objectives, we:

- Reviewed relevant GSA contract clauses, including clause I-FSS-125, Requirements Exceeding the Maximum Order;
- Reviewed GSA Acquisition Letter FC-95-6 and Procurement Information Bulletin 96-8;
- Examined 27 GSA contracts' terms and conditions, and contract clauses;
- Examined six GSA solicitations;
- Evaluated vendors' interpretations of the application of clause I-FSS-125; and
- Held discussions and corresponded with GSA OIG and FAS personnel necessary to complete our audit objectives.

We conducted the audit in March 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Internal Controls

We performed a limited internal control review relative to our audit objectives.

Appendix B – Management Comment

From: [Thomas Sharpe - Q](#)
To: [James Hayes](#)
Cc: [Houston Taylor - QV](#); [Christopher Bennethum - Q0A](#); [Bill Sisk - QS](#)
Subject: Applicability of Price Reductions over the Maximum Order Threshold, Report Number A130068
Date: 04/19/2013 07:14 PM

Jim,

Thank you for the opportunity to review and comment on the Draft Audit Report - Applicability of Price Reductions over the Maximum Order Threshold, Report Number A130068.

The Federal Acquisition Service (FAS) concurs with the report recommendations. We look forward to continued collaboration with you to strengthen the Multiple Award Schedules and FAS acquisition programs in general.

Tom

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Appendix C – Report Distribution

Commissioner, Federal Acquisition Service (Q)

Acting Deputy Commissioner, Federal Acquisition Service (Q1)

FAS Chief of Staff (Q0A)

FAS Controller (QB)

Assistant Commissioner, Office of Acquisition Management (QV)

Division Director, GSA/IG Audit Response Division (H1C)

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