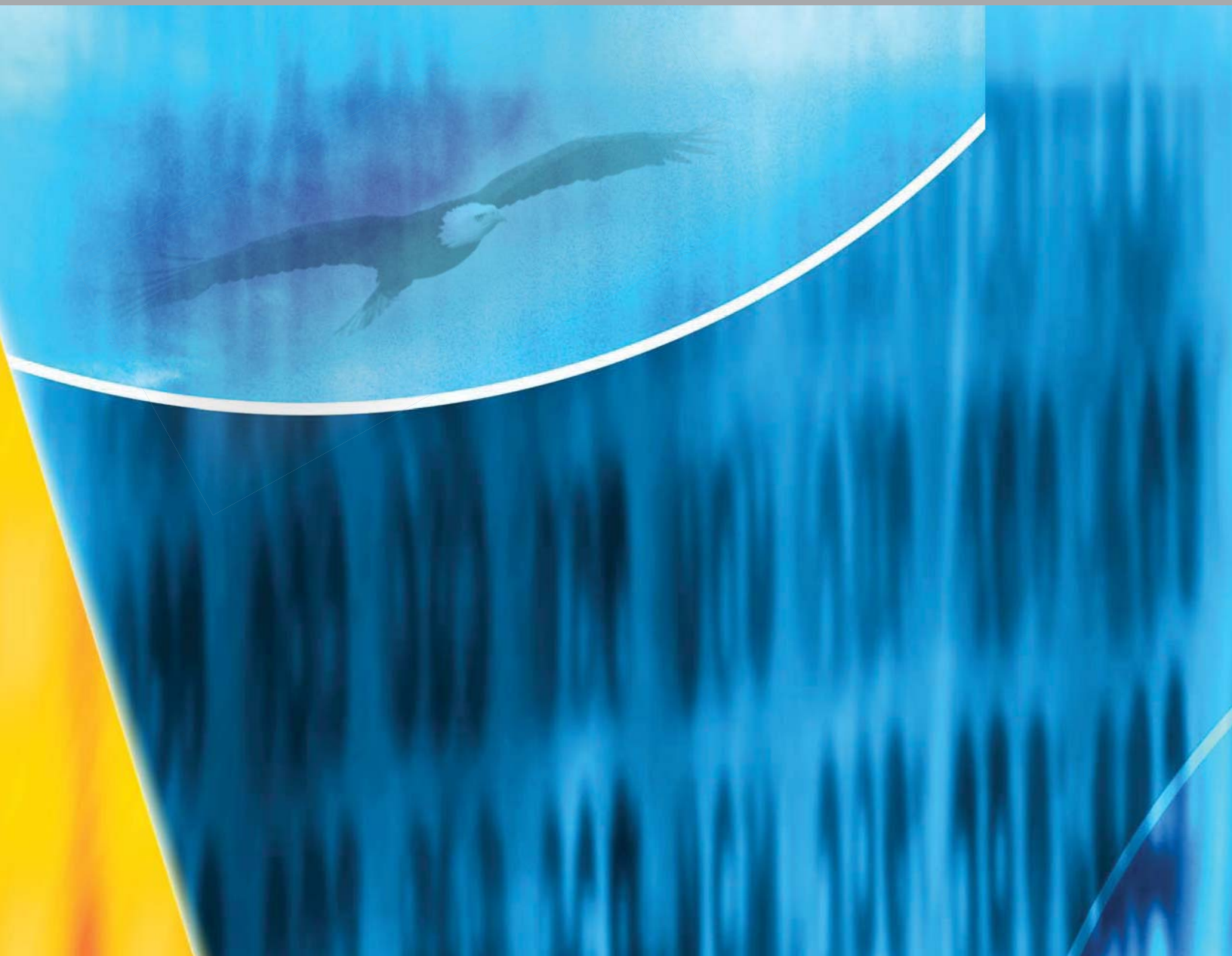


Written by The Honorable Brian D. Miller and Andrew Patchan Jr.

# Oversight of a Major Procurement Program: Multiple Award Schedules





The Honorable Brian D.

**Miller**

*“Like many other procurement programs, the Multiple Award Schedules program has increased dramatically, from 5,000 contracts in the mid-1990s to over 17,000 in 2007, and annual revenues exploding from about \$5 billion to over \$35 billion during the same time period.”*

**O**n October 10, 2006, the Deputy Attorney General announced the formation of the National Procurement Fraud Task Force, which highlights the work of OIG’s. At the same time, the Deputy Attorney General announced a major procurement fraud case, *United States ex rel. Hicks v. PeopleSoft, Inc. et al.*, CV PJM-03-422 (D. Md. 2003), which settled for \$98.5 million and is the largest defective pricing case under the GSA Multiple Award Schedules.

General Services Administration Multiple Award Schedules program streamlines, leverages, and simplifies procurement for the federal government. In doing so, MAS saves taxpayer money and government resources. An underlying assumption is that GSA will obtain the lowest prices for government agencies. Because the government often is the largest volume buyer, the government should get the largest discounts for its purchases. As a result, the MAS program is the premiere program for purchasing commercial items in the federal government with sales of over \$35 billion per year.

The problem is that contractors do not always fully disclose their pricing practices. They may in fact give discounts to other similarly situated

commercial customers, but not the government, which is a large volume buyer. When this happens, the GSA contracting officer does not know about the real prices and may negotiate a price for the government that is too high.

The GSA Office of Inspector General provides important oversight of this program primarily through preaward and postaward audits. These audits check to see if the vendors offering goods and services on the MAS are really giving the government the proper prices due to the volume of purchases the government makes. As the names indicate, a preaward audit verifies prices prior to a government contract or modification (extension), while a postaward audit checks that the terms and conditions are adhered to after the contract is awarded.

#### BACKGROUND OF THE MAS PROGRAM

Established under the Federal Property and Administrative Services Act of 1949, GSA has served as the federal government’s designated agency for the procurement of goods and services to more efficiently marshal the government’s buying power. As one of the primary centralized procurement programs operated by GSA, the MAS program makes a

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wide range of commonly used commercial goods and services available to federal agencies, under simplified acquisition methods, such as office furniture and supplies, personal computers, scientific equipment, network support, and laboratory testing services through indefinite-delivery/indefinite-quantity contracts.

The MAS program works on the principle that if the vendor will grant the Government the same favorable pricing that it provides its best commercial customers, the vendor may be granted a contract without further competition. In awarding indefinite quantity contracts to vendors under the MAS, GSA contracting officers can leverage the federal government's volume purchasing power across agencies to achieve best value, as opposed to an agency attempting to drive the best bargain for its individual procurement. At the same time, vendors can receive wider exposure of their commercial products and expend less effort to sell their products across agencies. In administering the MAS program, GSA is responsi-

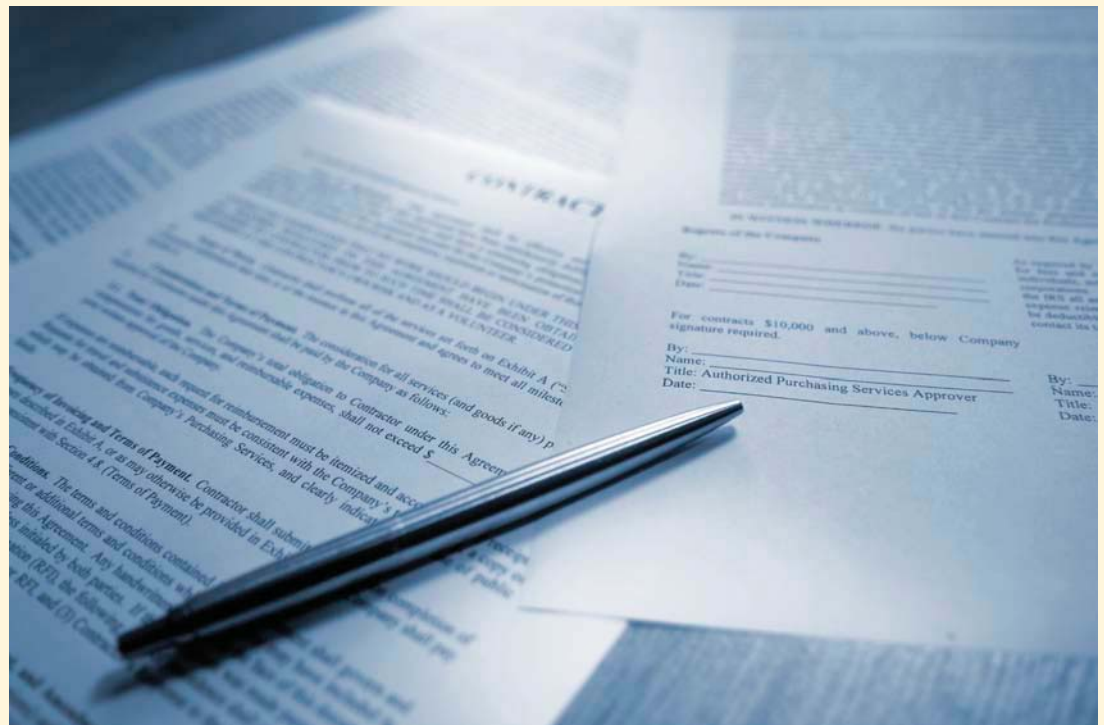
ble for ensuring that all procurement regulations are followed.

Like many other procurement programs, the MAS program has increased dramatically, from 5,000 contracts in the mid-1990s to over 17,000 in 2007, and annual revenues exploding from about \$5 billion to over \$35 billion during the same time period. Alarming, the ranks of contracting specialists have only increased from about 500 to 700. Thus the average contracting specialist now administers more than twice as many contracts and more than five times

the dollars. While GSA has succeeded with the MAS program in providing federal agencies a readily accessible procurement vehicle, GSA's ability to effectively administer the program's main purposes has been impacted by a lack of contracting officers to administer the increase in workload.

## CONTRACTING RISKS

While many MAS vendors do comply with MAS terms and conditions, and offer the Government pricing similar to their best commercial clients, some vendors are not fully forthright in the





completeness or accuracy of their disclosures. Vendors, at times, go to great lengths to obscure their complete sales and marketing practices, making it essential that our audits provide a comprehensive analysis. We have seen an increase in vendors taking advantage of the challenges GSA faces in managing the MAS program, and not fully complying with MAS requirements, resulting in higher costs to the government and the taxpayers. Several well-known cases of contract fraud across government have surfaced over the last several years with the significant increase in federal government contracting, particularly with the war on terrorism.

The NPFTF is focused on enhancing awareness of contract fraud, identifying methods to provide more oversight to ensure sufficient controls are in place to protect against fraud, and increasing prosecution of fraud cases.

There has been some discussion of reducing or eliminating the GSA OIG preaward audit program. One key area of discussion is the “price reduction clause,” which operates to reduce the price for the government whenever the company reduces the price to similarly situated commercial customers. In an era of exploding information technology sales and reductions in the price of IT equipment, goods, and services, it is imperative that the “price reduction clause” be effective, in force, and monitored.

IT products and services now make up almost 50% of schedule sales. In a market where hardware prices are continuing to drop, it has been a challenge to negotiate contract language with vendors that will provide the government with price protection for price reductions for the vendors’ similar commercial customers over the average 5-year renewal increments of MAS contracts. In short, when prices drop for other customers, the prices for the government must drop as well.

To make matters worse, the complexity of the MAS procurement and contracting processes have grown considerably with the many changes in federal contracting statutes, federal acquisition regulations, and procurement information notices, that have affected the MAS program. Arguably the most significant change over the last several years has been the addition of services to the MAS program.

This addition represents particular complexities because determining fair and reasonable prices for professional services can be difficult and involve analyzing labor rates for a wide variety of skill levels. By contrast, analyzing the price of a commonly used commercial item, such as a ball point pen that is similar to many other pens already on the MAS, would be much more straightforward. Services now comprise over 60% of MAS sales.

## OIG AUDIT OVERSIGHT OF THE MAS PROGRAM

The OIG Office of Audits has a unique role in overseeing the MAS program. Under our preaward audit program, audit staff analyze the vendor’s offered prices to obtain an MAS contract or contract extension, and determine whether the commercial sales information provided by the vendor currently, accurately, and completely discloses sales data for



the vendor's sales with its commercial customers. Leveraging the federal government's volume purchasing power across agencies into the MAS discounts, GSA contracting officers target the same or better pricing granted to the vendor's most favored commercial customers taking into consideration differences between the MAS schedule and commercial terms and conditions. In addition, the audit staff analyzes whether the vendor's systems are adequate to ensure compliance with the requirements of its MAS contract.

In 2005 the Government Accountability Office reviewed the MAS program and the role of OIG audits and found that GSA should take additional steps through the use of available pricing and negotiation tools -- particularly OIG preaward reviews -- to save the government hundreds of millions of dollars in the procurement of goods and services. In response to the GAO report, the Office of Management and Budget directed GSA to support additional preaward reviews financially from fees it earns in providing the MAS contracts for agencies.

Under our postaward audit program, audit staff analyze whether a vendor has complied with MAS terms and conditions, including whether:

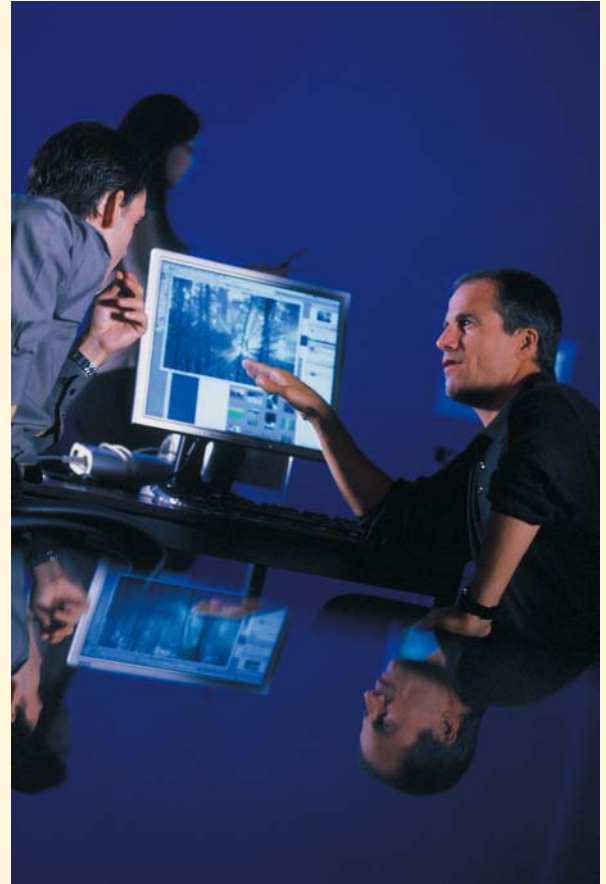
- Agencies were billed the correct prices under the terms of the vendor's MAS contract;
- Vendor personnel providing services to federal agencies complied with the qualifications required under the MAS contract; and
- Vendor reductions to its prices for products and services under the MAS contract are consistent with price

decreases for its best commercial customers used as a basis for award of the MAS contract prices.

Cases showing an egregious lack of compliance with these requirements are referred to the Department of Justice for prosecution under civil or criminal fraud statutes.

The OIG's MAS audit program is managed by senior auditors with extensive experience and understanding of the MAS program and the Federal Acquisition Regulation. Our audit staff uses sophisticated software programs that enable them to review entire databases of a vendor's sales history to identify non-disclosures. Through these analyses, our audit findings on preaward audits have a direct and significant impact on helping the contracting officer to negotiate and obtain better pricing and savings for the government. Sometimes the savings amounts to hundreds of millions of dollars over a vendor's typical 5-year extension of an MAS contract. Since 2004, the OIG has issued an average of 60 MAS preaward audit reports annually and identified nearly \$800 million in cost avoidance per year.

Similarly, audit findings on post award audits have had direct and significant impacts on recovering funds from the vendor for overbilling, and for prices that were not reduced for the federal government despite decreases for the vendor's best com-



mercial customers that are used as a basis for MAS contract prices. Since 2004, we have identified almost \$36 million per year on average in recoveries for the government. In 2007, the Department of Justice achieved the largest civil recovery in the history of the MAS program -- \$98.5 million against Oracle/PeopleSoft for misrepresenting its commercial pricing in negotiations with GSA.

Our results have shown that for the majority of contracts that the OIG audits (over 60% in 2007), vendors are not disclosing all commercial pricing and offering the government the best commercial pricing when compared to similar commercial customers. In addition, over one-third of the contracts we audited show that vendors are not passing on price re-



ductions or maintaining adequate sales monitoring and billing systems, and in one-fourth of the cases, vendors are overbilling the government for products and services.

The GSA OIG is committed to continuing to support and oversee work on GSA's MAS program, in addition to our workload of auditing GSA's numerous other programs, such as construction and leasing activities for obtaining and maintaining space for federal employees, the agencies' financial statements, and the security of information technology systems. Our results in cost savings and recoveries under the MAS program have been an important contribution toward improved GSA operations.

## CONCLUSION

The historic and legislative foundation for GSA and the MAS program clearly specify a primary GSA mission to leverage the government's volume

purchasing power to bring about the best prices for products and services for federal agencies. GSA continues to face challenges in carrying out this function, and has additional opportunities to drive down prices for goods and services for federal agencies.

The OIG focuses its resources on those areas representing greatest risk. We will continue to concentrate on supporting and overseeing the MAS program toward achieving the program goals of achieving economies and efficiencies for federal procurement of goods and services, and savings for the taxpayers, for which GSA was legislatively established. ✎

## Author Biography

The United States Senate confirmed **Brian D. Miller** as the Inspector General of the U.S. General Services Administration on July 22, 2005. In 2007, Mr. Miller was recognized by *Ethisphere* magazine as the 12th "most influential person in business ethics" by a worldwide panel of experts. In July 2008, Mr. Miller was named among "Those Who Dared: 30 Officials who Stood Up for Our Country," a special report of Citizens for Responsibility and Ethics in Washington. Mr. Miller began his career in private practice and earned his law degree from the University of Texas.

**Andrew Patchan Jr.** serves as Assistant Inspector General for Auditing, U.S. General Services Administration, where he is responsible for managing and directing the nationwide operations of 180 auditors located in 13 regional and headquarters offices. Mr. Patchan, an attorney, joined the OIG in 1993, as an audit manager in the Headquarters Audit Office. Mr. Patchan received his bachelor's double major degree in Economics and Political Science (General Honors Program) from the University of Maryland (College Park) and his J.D. from George Mason University.