

David A. Drabkin
Principal
Drabkin and
Associates, LLC

GSAR Case 2020-G502

Disclaimer

- The opinions expressed herein are solely those of the author.
 - In particular my wife, son and daughter specifically disavow anything I'm about to say! 😊

Can We All Agree?

- Schedules Program is supposed to support federal customers?
- Objective is to achieve government objectives
 - Capability
 - Price
 - Schedule
 - Performance

Radical Idea

- Revise the schedules to a government managed portal
 - Publish Ts&Cs to be incorporated by reference when a but is made through the portal
 - Portal accesses all companies in the marketplace
 - Applies gov't rules before buyers sees sellers e.g.
 - Debarred/suspended
 - Prohibited sources
 - Non WTO and Trade Agreement compliant
 - Buy American where applicable
 - Etc.
 - Use pricing tools to identify market pricing on the day and time of the buy
 - Portal seeks discounts before final price is agreed too
 - Track and share in real time
 - Time transaction takes
 - Vendors considered
 - Award price
 - Protests
 - Kor performance

Why?

876 authorizes not establishing pricing in the basic contract



GSA's Administrator has the authority to create the Schedules program and may establish rule for schedules.



The schedules program is anti-competitive.

It limits competition to schedule holders

It denies gov't customers access to state-of-the-art capabilities and processes, which are not schedules holders

Pricing is obsolete the moment after Schedules contract are awarded

If Not the Radical Approach, Implement the recommendations of the MAS Panel

- In summary, the panel found:
 - At the Schedule contract level, it is more difficult to determine fair and reasonable prices for services than for products.
 - Meaningful competition occurs at the order level.
 - While the goal of GSA may be to obtain the best price a contractor gives to its most favored customer for any particular Schedule item, its policy allows for the award of Schedule contracts that are not priced as favorably as the contractor's most favored customer.
 - That GSA does not systematically collect ordering data for its own use or for use by ordering activities to leverage the Government's buying power
 - The value of the Price Reduction Clause as an appropriate tool for the MAS program is questionable
 - The best ways to determine a "fair and reasonable price" are to enhance competition at the schedule contract and order levels and to ensure that the process of contract and order formation is transparent to both GSA and all authorized ordering activities, while protecting the contractor proprietary data, which if released could cause economic harm.

Do It by Publishing a Rule in the GSAR

- GSA Administrator creates and establishes rules for the Schedule Program.
- Doesn't have to be done the FAR rulemaking process
- But should be done using that process to obtain and consider public input
- Once established in the GSAR, publish the rules in the FAR, so folks can find them in one, central place
- No matter what, don't do the APA rulemaking process – doesn't apply to government contracting.