



## Attachment

The new modification evaluation process has some benefits to contractors, particularly those dealing with high demand items. There are unintended consequences, however, that, over the long-term, will impact customer agency access to the commercial market by limiting access to complete catalog offerings. Based on their ongoing interactions with contracting officers in the negotiation of pricing, Coalition members set forth the following concerns:

- Members respect that the new evaluation process is still being rolled out and tested. Still, there is a significant amount of confusion over pricing in the Schedules program which stems from, in part, the lack of guidance and/or the existing guidance being spread across multiple policy documents. The key relevant documents for MAS should be the solicitation itself and the GSAR/FAR. For context, almost every other Government contract clearly spells out its evaluation criteria for offerors in the solicitation. In contrast, GSA's fair and reasonable criteria are found in multiple policy memos and other documents (some of which are not even available to the public). At the same time, tools, like 4P or this new process, are not contemplated in either the solicitation or the GSAR. There are some benefits to this new process. It serves as a "work around" to current policy guidance that is hamstringing contracting officers and contractors. At the same time, if GSA is serious about improving/streamlining the evaluation process, the Federal Acquisition Service (FAS) should publish draft guidance for public comment and share crucial policy guidance and information in the places that industry will look for it.
- It is our understanding that the new evaluation applies to **add modifications and EPA modifications**. Although the evaluation process may be appropriate for add modifications, applying this process to EPA modifications undercuts the streamlined evaluation process outlined in GSAR 552.216-70, the EPA clause currently included in MAS contracts. According to the GSAR clause, if a contractor's commercial price increases, the increase does not exceed the limits, and their BOA discount is not disturbed (assuming this is a non-TDR contract), then GSA should immediately approve the EPA.
  - The EPA clause does not require price comparisons under these circumstances.
  - Feedback from our members indicates that current EPA processing times are taking too long.
    - Thus, applying this evaluation process to EPA modifications appears to undercut streamlining measures authorized by the Senior Procurement Executive and the FAS Assistant Commissioner for the Office of Policy and Compliance.
  - Another unintended consequence of the new evaluation process is that it is driving MAS contractors to remove commercial products that are not top sellers from their contracts, creating hurdles to accessing less popular, but still needed, items.
    - Having a company's entire catalog on contract is a significant value to the MAS program. A complete catalog provides customer agencies with the depth and breadth of commercial offerings to meet evolving mission needs. Certainly, historical demand data can be an indicator of future needs, but those needs evolve over time, especially in the MRO industry. Fulsome catalog offerings

- provide flexibility, consistent with commercial practice, to meet changing customer needs.
- Additionally, GSA has added language to their modification guidance requiring that “The items being deleted will not be added at a later date with a higher price without justification for such higher price.” By maintaining this policy, GSA is incenting contractors to avoid product deletion for fear it would be almost impossible to add it back.
    - There are questions and concerns that the use of certain pricing data will have an unintended, long-term, negative impact on the program and contractors. Specifically, the use of the data will result in the elimination of so-called “low volume items” from a contract and creating a new barrier to entry for contractors/offerors. Along with the potential elimination of current items from the contracts, there is a real fear among contractors that, in the future, when contractors propose new Adds that include those items, they will face rejection based on “No Market Research Found.”
      - More to the point, GSA’s insistence that new SKUs have historical or comparative prices for review makes no sense in the face of the needs driving the market. DoD and other agencies need and thrive on new technology, and GSA is stopping the flow of new technology products based on a lack of “market research.” As a result, needed products are not flowing to the warfighter.
    - The reduction of products on schedule contracts will impact customers, as many agency buyers are already turning to Open Market purchasing to fill gaps. Member firms are already seeing a spike in open market purchases from customer agencies.
    - Finally, GSA’s focus on the top selling items risks creating a significant increase in contracting officer workload, particularly around August and September, as agencies and contractors may need to put in special requests to add new/obscure items at the end of the fiscal year that otherwise would have already been on schedule contracts.
  - Instead of pushing negotiations to the line-item level (*i.e.*, assessing whether the price for this product fair and reasonable), GSA should be looking at applying the negotiations at the catalog or product line level (*i.e.*, assessing whether the overall discount structure is fair and reasonable). This approach is consistent with commercial practice when companies go to market with their product line offerings. Additionally, a line-item-by-line-item evaluation is a significant contributor to contracting officers being underwater with workload.
  - The new market thresholds developed for this process are an improvement, and members recommend that GSA implement them for the entire program and all 4P analyses.
  - The evaluation process should maintain some level of contracting officer discretion. Currently, it is our experience that if the offered items do not fall within the evaluation process, they must be rejected. It is important to pay attention to demand signals from key customers, like DOD, when creating and utilizing evaluation processes for modification approvals. In this process, contracting officer discretion is removed, and, as a result, 90% of submissions are being rejected. In our members’ experience, when they ask the contracting officers for an explanation, they are told that their hands are tied because of the new initiatives. Unless the proposal fits the new formula, it must be rejected.
  - For some contractors the new processing requirements have virtually stopped all progress on 4PL SKU “adds,” which is the largest and fastest-growing segment of the MAS Product portfolio.
    - DOD, through 4PL, is shifting business back to DLA and local contracting based on R6’s lack of understanding and urgency to approve mods.

- Customers are complaining that GSA has put policy/processes and ensuring forms look “complete” above national security interests.
- Technology cannot replace the human element of a contracting officer, particularly the discretion needed to understand a proposal in a business context.

Here are some examples of feedback from contractors regarding the new evaluation process:

**Firm A**

- February 2023, everything changed. We went from 95% of mods being approved to less than 10% being approved.
  - We and our industry peers believe this change coincides with the start of the SPEL and Mod Squad Initiatives. (e.g the increase in requests for supplier letters, offer pricing being compared to Google search prices irrespective of T&Cs, COO, availability, shipping, etc.).
    - The current focus is all on credit card transactions (lowering the number of SKUs on the Schedules Program) and pricing being compared to Google pricing.
  - GSA’s real opportunity is within DoD through MILSTRIP / Requisition – credit card is where the competition through open market captures the majority of DoD revenue.
    - DLA captures most Requisitions because GSA has made it so difficult to add products that DOD wants.
- Mod Squad and SPEL processes direct industry what its price has to be in order to add to the Schedules Program. Because prices are market-driven, e.g., based on terms, conditions, supply, and demand, this practice will force suppliers to move away from GSA and the MAS simply based on a lack of profitability and alternate opportunities for business investment.
- The 25K SKU approach is aimed at driving prices down on the fastest moving SKUs. Although this approach sounds good in theory, it is the opposite of what industry has done (added more SKUs), and what Public Sector State/Local Cooperatives want (EVERY SKU and EVERY SERVICE on contract to respond to the desires of their customers).

**Firm B**

We see GSA’s policy as having effects over the short- and long-term.

**Short-Term:**

- Suppliers are starting to pivot to other customer bases outside of the Federal market. When compared to the Federal market, these bases are more profitable and operate in a manner friendly to business.
  - It no longer is easy to do business with GSA. We have been working with GSA for over 20 years, and by far, this experience has been the most challenging to the ability to add products and get price increases approved, especially as we are facing a market with high inflation. The Schedules program has become so burdensome that suppliers are evaluating whether it is worth even having a schedule contract, or whether they should

proceed with working through direct relationships with DOD agencies (for those companies large enough).

- Businesses are experiencing additional costs associated with the investment of processes, resources, and tools to support this new approach, particularly around market research requirements and reviewing and resubmitting rejected items.

#### **Long-Term:**

- Small businesses have stated that they will go out of business due to the extra bureaucracy that was added starting in early 2023.
  - This outcome completely contradicts the goals of the Biden Administration, and it is rooted in the process that GSA is implementing.
- We are extremely concerned about the impact of this approach on market pricing. If the goal is to have schedule holders simplify their offer and offer the same 25,000 items, this can drive down market prices.

#### **Firm C**

- The approach is not a practical solution in those instances where the proportion of removed products negatively impacts the entire purpose of the MOD.
  - Take, for example, one MOD where we requested the addition of 852 products. We had every intent of using the 'new' approach here, but upon seeing the initial results, only 360 products would have been accepted. Said differently, it would have rejected 58% of our MOD. Recognizing this disparity, we have to do a trade-off analysis when preparing our modifications: (1) we can prepare and submit a MOD expecting over half of the items will be rejected; or (2) We can expend significant time, resources, and money to address pricing information/data in an effort to see that 42% of the MOD gets accepted. It becomes a question whether the entire process makes business sense.
  - In the case of another MOD, we initially requested a price change for 20,104 items. 14,754 items had some type of issue. Under the foregoing trade-off analysis, the situation clearly is much worse, as we are in the position of submitting a proposed modification to add items where GSA indicates it will accept only 26% of the items covered. It is worth noting that these 20,104 products are representative of most of our best-selling products (office items).
  - In a third instance, we faced a scenario where "only" 30% of our items would have been rejected (based on our current outstanding MOD "52"). Unfortunately, however, it happened that many of our very best-selling products were grouped into this rejected column. Thus, again, we faced a trade-off question.
  - The small business owner must consider the implications of the actual results of any given MOD. If 58% of a MOD is rejected, the small business is incented to assess time lost versus business lost when deciding to work further on the MOD. If the results reveal to a small business owner that 74% of the MOD will be rejected, then it is incumbent on GSA to explain how process expediency justifies an outcome that contradicts the Administration's policy to support small business.

## Firm D

We do not find the new method ideal for our commercial business model.

In one instance, we submitted an “addition” MOD on our OS4 (it includes the Safety and Hospitality SINs) contract for 14,358 items. The SPEL results were 889 accepted, 933 rejected, and 12,536 “No Data.” Later, the MOD was approved, but of the 933 that were rejected, we were not allowed to ACCEPT Market Threshold even though it was provided to us.

This new process took one month to complete. To make this modification even more frustrating, the Market Threshold on 45 Ability One items that we are required to sell was below our cost, leaving us to ponder how to proffer Ability One if we cannot get the items on contract. Further, when we were told that 889 products were accepted, we were directed to remove 13,469 products ineligible for Product Addition. We have no direction how to make these products eligible, and our MODs are substantially delayed.

Other Considerations:

- What is the impact on customer agencies and the schedules program? It may be too soon to see the devastating effect that this approach is going to cause our customers and especially the Schedules program, but it will hurt the small businesses that depend on GSA Advantage to market our products. We know our customers depend on us selling a vast array of items that they need, and we believe it will force the customer to shop outside of GSA Advantage.
- What are companies’ experiences with GSS’s new approach? We have been told by our contracting officer that nobody needs to have the number of items on their contract that we have. Lost is the notion of a superstore that stocks items for availability to a large, multifarious entity, like the government.
- What is the impact on your business operations in both the short-term and long-term? We will still be doing the same amount of work to prepare modifications, with less opportunity to sell the items, as we will not be able to get them on contract. Because we are 100% a government reseller with no commercial business, we feel this process is going to be detrimental to us. There is a huge disconnect between the vendors, including small businesses, and GSA right now.
- Final thought: It is not clear why GSA does not allow the vendor to add the “**No DATA**” items under a category that does not mention our contract number, a sort of a TAA-compliant Open Market Catalog. Doing so would save the contracting officers time on modifications and allow vendors to monitor sales volume and then qualify the items to be moved to our contract.

## Firm E

We question whether the SPEL pricing is meant to be a target or a requirement. Although the pricing “box” that we function in now appears to have a bit more breathing room, the real price competition occurs at the task order level. For this reason, we believe GSA will achieve the best ROI by focusing on responsiveness vs. overanalyzing pricing at the Schedule contract level, as the bulk of savings does not occur at the Schedule contract level.

- The overall approach has helped expedite some of our mods. We just do not know the full impact on rejected items yet, as we have not resubmitted under the SPEL process.

- CONCERN: Some contracting officers may continue to reject items if they do not fall within the SPEL thresholds or have no market research, rather than looking at other justifications, leaving us to wonder how these situations will be addressed.
- No market research in SPEL could cause delays in new emerging technologies/offerings to customers because those offerings will need to be removed from mods and resubmitted later with justification.

**Firm F**

- Pricing data could be extremely out dated during inflationary times.
- Pricing data is not matched up as a one-for-one. Vendor terms and conditions could add much more value than price alone. For example, they would capture terms, like:
  - Low Min Order
  - Next Day Delivery
  - Private delivery fleet

If GSA is asking vendors to submit items that agencies buy, then why cannot vendors add products to MAS? It appears that GSA is incenting agencies to leave the Schedule, which will increase purchasing through other channels that do not have the compliance protections of the Schedule.