



# **General Services Administration**

## **Summary of Section 876 Industry Listening Sessions re Competition at the Task Order Level**

**October 20- December 2, 2020**

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## *Introduction*

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Section 876 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232) for the Federal Supply Schedule (FSS) program (Section 876) gives GSA the authority to focus on creating robust competition at the order level, rather than evaluating prices for services acquired on an hourly rate basis at the contract level. However, changing an enterprise as big and complex as the FSS is not an easy task. GSA is well aware of the need to engage with our industry partners to ensure that we issue really effective Federal Acquisition Regulation (FAR) and General Services Administration Acquisition Regulation (GSAR) rules implementing Section 876.

GSA issued an [Advance Notice of Proposed Rule Making](#) (ANPR) to get industry's input. Three responses were received, but we also want to hear from more industry partners and we also wanted to hear what they had to say to us directly. We at GSA are genuinely interested in listening to our partners in industry, not just talking at them. To that end, the GSA Office of the Procurement Ombudsman organized and conducted a six part series of listening sessions, where industry representatives delivered presentations and engaged in dialogue with GSA stakeholders regarding their thoughts on how best to implement Section 876. The industry representatives covered a broad spectrum of industries and experiences. The academic, technology, small business industries, as well industry associations and the legal industry sectors were all represented. Other members of industry were also invited to register for the sessions and listen in.

### **Meeting Format**

The listening sessions were conducted virtually by Zoom and were started with a Welcome by the GSA Procurement Ombudsman followed by her introduction of the sessions speaker (s). Each listening session lasted one hour and depending on whether there were one or two speakers at each session, each speaker had thirty to sixty minutes to present, inclusive of questions and answers and dialogue.

The sessions focused on listening to the speakers and then the GSA stakeholders asked questions and engaged in dialogue with the speakers. Industry representatives listening in submitted questions or comments which were addressed during the session. The Ombudsman closed out the session by thanking the speakers and the audience and announced the next scheduled session and speakers.

The listening session dates and speakers are below:

**Session 1** - October 20, 2020 – **Christopher Yukins**, *Professor of Government Contracts Law, The George Washington University School of Law*

**Session 2** - October 27, 2020 – **Lorraine Campos**, *Partner, Crowell & Moring & Elizabeth Sullivan* *Vice President, Government Relations, Madison Services Group, Inc.*

**Session 3** – November 3, 2020 – **David Drabkin**, *Principal, Drabkin and Associates, LLC & Administrator, Council of Defense and Space Industry Associations* & **Jonathan Aronie**, *Partner, Sheppard Mullin*

**Session 4** – November 9, 2020 – **Alan Chvotkin**, *Executive Vice President & Counsel, Professional Services Council*

**Session 5** – November 17, 2020 – **Megan Petersen**, *Senior Director, Public Sector Policy & Counsel, Information Technology Industry Council* & **Jim Williams**, *Partner, Schambach & Williams Consulting, LLC.*

**Session 6** - December 2, 2020 – **Roger Waldron**, *President, The Coalition for Government Procurement*

Several GSA stakeholders also participated in these sessions to include among others, **Jeffrey Koses**, *GSA Senior Procurement Executive*, **William Clark**, *Director, GSA Office of Government-wide Acquisition Policy*, **Stephanie Shutt**, *Director of the MAS Program Office*, **Mark Lee**, *Assistant Commissioner for FAS*, and **Nicholas West**, *Acting Director, Office of GSA Acquisition Policy, Integrity & Workforce.*

## **Key NDAA Provision Discussed**

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Section 876 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L.115-232) for the Federal Supply Schedule (FSS) program amended 41U.S.C. 3306(c) by providing an exception to the requirement to consider price as an evaluation factor for the award of certain indefinite-delivery, indefinite-quantity contracts and Federal Supply Schedule contracts.

## Executive Summary

**Summary of:** GSA's Section 876  
Industry Listening Session

**Dates of Meeting:** Oct. 20- Dec 2, 2020

### Summary of Key Themes and Recommendations

#### Summary of Key Themes & Recommendations

1. Contractors support the implementation of 876 and GSA should embrace it.
2. Unforeseen consequences could include disincentivizing competition at the task order level if there's too much of it, and savings could be offset by increased costs to bid on task orders.
3. 876 could be beneficial for cooperative purchasing because competitors are now just completing a responsibility or qualification assessment, but could present challenges to state and local governments having to negotiate labor rates at the time of task order solicitation.
4. 876 will increase small business participation in GSA's Schedules Program.
5. The majority of industry said to implement 876 all at once. If a phased approach is taken, implement completely on selected schedules/SINs first (e.g., Schedule 70 & PSS). Potentially implement 876 during as contract option periods roll over.
6. There was split industry support for whether or not to use a pilot program or a prices-paid portal to implement 876.
7. Unanimous support for getting rid of the Price Reduction Clause (PRC) and the price adjustment clause because they are major barriers to entry in the Schedules, especially for small businesses.
8. GSA should not request pricing at the schedule level where 876 applies. Focus at the Schedule level should be elevated for factors such as corporate experience, technical capability, and past performance.
9. Keep it simple. There doesn't need to be two different sets of contracts, one with priced one with unpriced, one with products, one with services.
10. 876 authority can be used on fixed price contracts.
11. There is support for controlling 876 implementation at the GSAR level and updating the FAR later.
12. Education and outreach regarding GSA's implementation of 876 is needed for small businesses, people internal to GSA, the federal acquisition workforce, customer agencies, and the OIG.
13. Need implementation and communications plan, a specific point of contact, and clear measurement criteria to measure the success of Section 876
14. There is a lack of transparency in the Schedules program and the eBuy system should be made public.

## Detailed Findings

Speakers	Thematic Elements	Highlights, Detailed Findings, Presentations, & Transcripts
<b>Christopher Yukins – October 20, 2020</b>	<b>Reducing Costs and Barriers to Entry</b>	<p><b>I. Highlights &amp; Detailed Findings</b></p> <p><b>1. Reduced Costs</b></p> <ul style="list-style-type: none"> <li>● Section 876 will reduce costs for offerors to enter into the FSS program, which will benefit small businesses.</li> <li>● No-price master contracts will also slow price inflation that is happening under the current model because of most favored customer pricing.</li> </ul> <p><b>2. Reduced Barriers to Entry</b></p> <ul style="list-style-type: none"> <li>● Section 876 will eliminate the price reduction and price adjustment clauses at the contract level.</li> <li>● This will decrease the risk of legal action that small businesses currently face, which is a barrier to entry into the GSA schedules.</li> <li>● The GSA master contracts will move towards adaptable pricing, which will reduce small business resistance to participating in cooperative purchasing from state and local governments.</li> </ul>
	<b>Cooperative Purchasing Comparison</b>	<p><b>1. Competitors are now just completing a responsibility or qualification assessment</b></p> <ul style="list-style-type: none"> <li>● This will increase competition at the task order level because each contractor competing at the task order level will be qualified to perform the contract.</li> </ul> <p><b>2. Section 876 will enable GSA to enter into other markets</b></p> <ul style="list-style-type: none"> <li>● Instead of being restricted to IT, security, and law enforcement products and services, Section 876 will enable GSA to enter into other markets.</li> <li>● A legal issue likely to come out of using Section 876 in cooperative purchasing is in a crisis, who has first prerogative over the supply chain, the federal government or the states? The federal government could use the Defense Production Act to grab supplies away from the states. Meanwhile, the states have first responsibility for the welfare of their citizens.</li> <li>● The federal government should be a facilitator rather than an opponent in a time of crisis.</li> </ul>
	<b>Implementation Suggestion</b>	<p><b>1. NASPO as a model for implementation of Section 876</b></p> <ul style="list-style-type: none"> <li>● GSA should use the National Association of State</li> </ul>

		<p>Purchasing Officials (NASPO) as a model for implementing Section 876, because NASPO runs a master contract that operates a lot like the GSA schedules.</p> <ol style="list-style-type: none"> <li><b>2. Use a BPA to define in advance which terms will apply to the task order</b> <ul style="list-style-type: none"> <li>● Currently, GSAM 552.238-114 governs cooperative purchasing, and does not define the legal rights and remedies of state and local governments buying through the GSA schedule. This creates an opportunity for dispute.</li> <li>● To fix this, GSA should encourage state and local governments to enter into a Blanket Purchase Agreement (BPA) with the vendor that would define what price competition, transparency, and socioeconomic terms will apply to the task order</li> </ul> </li> <li><b>3. The eBuy system should be made public</b> <ul style="list-style-type: none"> <li>● Section 876 creates a scenario where the second stage is the actual contracting stage, so GSA needs to make eBuy public to measure whether or not competition is effective</li> </ul> </li> </ol>
<p><b>Lorraine Campos – October 27, 2020</b></p>	<p><b>Challenges Posed by the Revised Section 876</b></p>	<p><b>I. Highlights &amp; Detailed Findings</b></p> <ol style="list-style-type: none"> <li><b>1. Adjustments</b> <ul style="list-style-type: none"> <li>● Separating out the product (contract level) and the solution/labor rate (task order level) may be a challenge for contractors because they had just adjusted to having one schedule.</li> <li>● Increased labor competition on the task order level could be challenging for many companies that frequently bid on the task order level.</li> </ul> </li> <li><b>2. Pricing Ahead of Time</b> <ul style="list-style-type: none"> <li>● Contractors will need to know ahead of time where the price reduction clause is (on the contract or task order level) so that they can know how to price their products accordingly.</li> </ul> </li> <li><b>3. Potential Unintended Consequences</b> <ul style="list-style-type: none"> <li>● Companies might decide not to bid on the task order level at all, because they would have to go through the process of negotiating the labor rates at the task order rather than contract level.</li> <li>● Price savings could be offset by increased costs as contractors are submitting task orders because of the additional administrative burden the revised 876 places on the task order level.</li> </ul> </li> </ol>

		<p><b>4. Impact on Cooperative Purchasing</b></p> <ul style="list-style-type: none"> <li>The new 876 could be a challenge for state and local governments doing cooperative purchasing during an emergency on a compressed timeline because it requires them to negotiate labor rates at that time rather than on the contract level, ahead of time.</li> </ul>
	<b>Benefits from the Revised 876</b>	<p><b>1. Reducing Barriers for Small Businesses.</b></p> <ul style="list-style-type: none"> <li>The revised Section 876 will ease the burden on small businesses at the front end of the contract negotiating process. The current process asks a lot of small businesses: they have to put everything together, comb through their sales, determine the labor rates and categories that are necessary, and how people fit in.</li> <li>The revised 876 will also result in price savings up front for contractors as they're negotiating a GSA contract.</li> </ul>
	<b>Implementation Suggestions</b>	<p><b>1. Education</b></p> <ul style="list-style-type: none"> <li>GSA should provide a lot of information and education about these changes to industry, particularly to small businesses. It costs small businesses a lot to hire consultants to figure this out on their own.</li> </ul> <p><b>2. GSA Should Eliminate the Price Reduction Clause Altogether</b></p> <ul style="list-style-type: none"> <li>Eliminating the price reduction clause is customer and consumer friendly. There is a lot of support for getting rid of it.</li> </ul>
<b>Elizabeth Sullivan – October 27, 2020</b>	<b>Benefits from the Revised 876</b>	<p><b>I. Highlights &amp; Detailed Findings</b></p> <p><b>1. This Is a Positive Change for Small Businesses</b></p> <ul style="list-style-type: none"> <li>The new 876 is a positive change for small businesses because of the volume of vendors who want to compete on the task order level.</li> <li>Future awards can be made based on more limited competition and a faster procurement timeline.</li> </ul>
	<b>Questions Contractors Will Have</b>	<p><b>1. Effect on IDIQs</b></p> <ul style="list-style-type: none"> <li>Contractors want to know how the revised 876 will be implemented for the IDIQs that have only a handful of awardees.</li> <li>FAR Part 8 doesn't require everyone to bid via fair consideration. How will the revised 876 impact price reasonableness for smaller IDIQ task order bids?</li> </ul>
	<b>Implementation Suggestions</b>	<p><b>1. Create an Equal Playing Field</b></p> <ul style="list-style-type: none"> <li>GSA should implement 876 across the board to create an equal playing field. Section 876 should apply to existing IDIQ contractors as well as newcomers.</li> </ul>

		<p><b>2. Solicitation Pricing</b></p> <ul style="list-style-type: none"> <li>GSA should still ask for pricing as part of the solicitation, even though pricing may not be evaluated at the contract level for hourly-rate services, so that contractors can benchmark pricing of their services for use in future task order price reasonableness analysis.</li> </ul> <p><b>3. Pilot Program</b></p> <ul style="list-style-type: none"> <li>GSA should think about using a pilot program to gradually implement 876 on one of the larger schedules (PSS or IT70).</li> </ul>
<p><b>David Drabkin – November 3, 2020</b></p>	<p><b>Current Issues with the Schedules Program</b></p>	<p><b>I. Highlights &amp; Detailed Findings</b></p> <p><b>1. Anti-Competitive</b></p> <ul style="list-style-type: none"> <li>The current schedules program is anti-competitive. Government buyers are denied access to the many companies out there who may have similar, better priced products or services and may also be small, but just aren't in the current Schedules program.</li> <li>An even small number of schedules holders can compete for subsequent work, which is not ideal.</li> </ul> <p><b>2. Pricing</b></p> <ul style="list-style-type: none"> <li>A MAS Panel Report came to the conclusion back in 2009 that fair and reasonable pricing should be determined where the pricing occurs. This is more sensible than trying to negotiate the price up front for a five year contract that the government can extend for another three to five year term.</li> <li>The price reduction clause is an archaic tool and GSA should get rid of it.</li> </ul> <p><b>3. Opportunity for Reform</b></p> <ul style="list-style-type: none"> <li>Section 876 gives GSA the unique opportunity to reform the Schedules Program so that it is more in line with Congress's intent for the program: to assist federal customers to acquire goods and services at good prices, quickly.</li> </ul>
	<p><b>Increase Transparency by Implementing Section 876 via a Portal</b></p>	<p><b>1. GSA Should Manage the Portal</b></p> <ul style="list-style-type: none"> <li>GSA should revise the schedules by implementing a GSA-managed portal based on the authority given to GSA by the Federal Property Administrator Services Act.</li> </ul> <p><b>2. The Portal Will Streamline the Procurement</b></p>

		<p><b>Process</b></p> <ul style="list-style-type: none"> <li>● Participation in the portal would constitute vendors' agreement to public terms and conditions that they wouldn't have to negotiate separately.</li> <li>● The portal would access all of the companies in the marketplace, not just those that have schedule contracts.</li> <li>● The portal would enable the government buyer to see only fully compliant companies by checking: <ul style="list-style-type: none"> <li>○ Whether a company is on the debarred and suspended or prohibited sources lists</li> <li>○ Whether a company is from a WTO or a trade agreements compliant country</li> <li>○ Whether a company has indicated that its products or services comply with the Buy American requirement</li> </ul> </li> <li>● Other things the portal would do: <ul style="list-style-type: none"> <li>○ Track contractor performance all in one place, fixing the current issue of contractor performance being tracked in scattered databases throughout the agencies</li> <li>○ Use pricing tools to help identify what the current market price is for a product or service on the day the government wants to procure it</li> <li>○ Ask for available discounts, similar to what happens in the private marketplace with Rakuten and Honey</li> <li>○ Identify what is currently in surplus for government buyers</li> </ul> </li> </ul> <p><b>3. Use Portals in the Private Marketplace</b></p> <ul style="list-style-type: none"> <li>● Amazon and Wal-Mart already have similar portals set up. GSA should base their portal on those that already exist in the private marketplace.</li> </ul> <p><b>4. Practical Effects of the Portal: Increased Vendor Participation</b></p> <ul style="list-style-type: none"> <li>● The portal would take the effort out of tracking and sharing information about government contracts. This will decrease the time it takes the government to inform contractors about awards. Small businesses are currently concerned that it takes too long for the government to let them know about contract awards.</li> <li>● The portal would give GSA a more central role in the type of buying that GSA ought to facilitate for the rest of the government, because every government buyer would go through the portal managed by GSA.</li> <li>● The portal would have the overall effect of increasing</li> </ul>
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		<p>competition by drawing more vendors in to participate, especially small businesses who aren't currently attuned to selling to the government.</p> <p><b>5. Portal Drawbacks: Initial Cost and Limits to Transparency</b></p> <ul style="list-style-type: none"> <li>• The portal would require a good chunk of money up front, but it would pay for itself quickly.</li> <li>• While the portal is aimed at increased transparency throughout the procurement process, limits to transparency should be considered for certain procurement scenarios such as military operations and potentially contractor performance.</li> </ul>
	<b>Impact on Federal Regulations</b>	<p><b>1. Control 876 Implementation via GSAR</b></p> <ul style="list-style-type: none"> <li>• GSA should control the portal process at the GSAR level, and then add in the rules to the FAR later.</li> <li>• GSA should use the public comment process to help overcome objections.</li> </ul>
<b>Jonathan Aronie- November 3, 2020</b>	<b>Practical Effect of 876</b>	<p><b>I. Highlights &amp; Detailed Findings</b></p> <p><b>1. Debatable Increased Competition on the Task Order Level</b></p> <ul style="list-style-type: none"> <li>• Most of the important procurements are already competed at the task order level, so we shouldn't be too excited about no longer having a schedule price.</li> </ul> <p><b>2. Decreased Burdens</b></p> <ul style="list-style-type: none"> <li>• Section 876 will not require transactional data reporting.</li> <li>• It will decrease the burden on contractors and on the government, which will increase competition and decrease costs for the government.</li> </ul>
	<b>Implementation of 876</b>	<p><b>1. Apply Section 876 All at Once</b></p> <ul style="list-style-type: none"> <li>• GSA should roll out 876 all at once because it will decrease confusion, contractor risk, and protests.</li> </ul> <p><b>2. Regulation Updates</b></p> <ul style="list-style-type: none"> <li>• GSA should implement the Coalition for Government Procurement's suggestions about updates to the FAR and GSAR in their comment to the ANPR.</li> </ul>
	<b>Pricing</b>	<p><b>1. 876 Creates a Better Pricing Scenario</b></p> <ul style="list-style-type: none"> <li>• Current pricing at the schedule level creates a silly situation where GSA's contracting officers and Inspector General auditors are ignoring the actual work that's going to be done at the task order level. Section 876 pricing at the task order level is much more sensible.</li> </ul> <p><b>2. Changes Aren't Too Dramatic</b></p>

		<ul style="list-style-type: none"> <li>• There will not be an issue with a schedule that has some priced and some unpriced services under Section 876; GSA can have a single schedule with multiple types of pricing on it.</li> <li>• GSA will still be able to have contracts based on hourly rates.</li> </ul> <p><b>3. Get Rid of the Price Reductions Clause</b></p> <ul style="list-style-type: none"> <li>• The price reduction clause does very little to actually help the process of procurement, and GSA should get rid of it.</li> </ul> <p><b>4. GSA Should Not Request Pricing Information Up Front</b></p> <ul style="list-style-type: none"> <li>• GSA should not request pricing information at the schedule level. Section 876 doesn't require it, and from the contractor's perspective it's extremely burdensome, expensive, and laden with risk. This increases costs for the government.</li> </ul>
<p><b>Alan Chvotkin – November 9, 2020</b></p>	<p><b>PSC Key Takeaways</b></p>	<p><b>I. Highlights &amp; Detailed Findings</b></p> <p><b>1. Discretionary</b></p> <ul style="list-style-type: none"> <li>• 876 is discretionary, not mandatory, but GSA should take full and rapid advantage of the flexibilities in the revised statute</li> </ul> <p><b>2. Implementing the authority</b></p> <ul style="list-style-type: none"> <li>• GSA should apply 876 flexibilities across all the federal supply schedules</li> </ul>
	<p><b>Contract Type</b></p>	<p><b>1. Applicability to fixed-price contracts</b></p> <ul style="list-style-type: none"> <li>• GSA should apply 876 flexibility to fixed-price contracts in which services can be converted to hourly rates, as long as the predominant part of the acquisition is for services</li> </ul> <p><b>2. Coexistence of price schedules with unpriced items</b></p> <ul style="list-style-type: none"> <li>• GSA should not establish separate contracts for priced and unpriced items</li> <li>• Price schedules can easily coexist with unpriced items for services to be acquired on an hourly basis</li> </ul>
	<p><b>FAR Changes Necessary</b></p>	<p><b>1. Implement, then fix the FAR</b></p> <ul style="list-style-type: none"> <li>• Most of the FAR provisions are still sufficient, and GSA can clean up inconsistencies as implementation of 876 develops</li> <li>• The FAR language is still accurate if pricing isn't established at the contract level, because 876 is</li> </ul>

		<p>discretionary rather than mandatory</p> <p><b>2. Pricing provisions</b></p> <ul style="list-style-type: none"> <li>• Where fixed unit rates can be converted to an hourly basis, separate ordering procedures are not required</li> <li>• Fair and reasonable price determination can still be made for items at the task order level, even if pricing is no longer evaluated at the contract level</li> <li>• A request for certified cost and pricing data is generally unnecessary, even at the task order level</li> <li>• If there's no competition for an agency order, 876 is not implicated</li> </ul>
	<b>GSAR Changes Necessary</b>	<p><b>1. Fewer changes than anticipated</b></p> <ul style="list-style-type: none"> <li>• Price reductions will likely need to be addressed, but implementation should be treated as permissible</li> <li>• Likely don't need to change a lot about transactional data reporting</li> <li>• Price lists can still be maintained at the task order level, since 876 is discretionary</li> </ul>
	<b>Other Regulatory Impacts</b>	<p><b>1. Reduced burdens</b></p> <ul style="list-style-type: none"> <li>• GSA could still ask for pricing as part of the schedule formation, but pricing should be ignored where 876 applies at the task order level, and the acquisition seeks to apply 876 discretionary authority</li> <li>• 876 will reduce the time and burden for offers and for submitting and negotiating schedules awards</li> <li>• PSC was to provide additional information after engaging with member companies</li> </ul>
<b>Megan Petersen – November 17-2020</b>	<b>Section 876 is a Contracting "Game Changer"</b>	<p><b>I. Highlights &amp; Detailed Findings</b></p> <p><b>1. Game changing to the industry</b></p> <ul style="list-style-type: none"> <li>• Section 876 is a contracting game changer because it's a fundamental shift in how the government awards large contracts and thinks about the concept of best value</li> </ul> <p><b>2. How to implement 876 to ensure it is a game changer</b></p> <ul style="list-style-type: none"> <li>• Implementation is discretionary, but GSA should implement 876 ASAP</li> <li>• GSA should not spend time on a mass modification to strip out pricing from current contracts because 876 doesn't require that</li> <li>• GSA could implement 876 at the end of contractor</li> </ul>

		<p>option periods</p> <ul style="list-style-type: none"> <li>• GSA should increase engagement with industry and provide training to government contracting officers</li> <li>• GSA should elevate consideration of corporate experience, technical capability, past performance, internal cybersecurity best practices, and sustainability since it will not always be evaluating price at the schedule level</li> </ul>
	<p><b>Contract type</b></p>	<ol style="list-style-type: none"> <li><b>1. Use on multiple types of contracts</b> <ul style="list-style-type: none"> <li>• GSA can use 876 not only on labor hour T&amp;M but also on fixed price contracts</li> </ul> </li> <li><b>2. Use of existing authority</b> <ul style="list-style-type: none"> <li>• GSA can use existing authority under FAR part 8.405-6 to limit competition</li> </ul> </li> </ol>
	<p><b>Mixed-Use Contracts</b></p>	<ol style="list-style-type: none"> <li><b>1. Grouping related items together</b> <ul style="list-style-type: none"> <li>• GSA should group related priced products and unpriced services on the same contract</li> </ul> </li> <li><b>2. Alternative option</b> <ul style="list-style-type: none"> <li>• Alternatively, GSA should allow single orders using multiple priced and unpriced contracts</li> </ul> </li> </ol>
	<p><b>Regulatory impacts</b></p>	<ol style="list-style-type: none"> <li><b>1. Not necessarily a net decrease in burdens for contractors</b> <ul style="list-style-type: none"> <li>• A lot of ITI member companies are manufacturers working with resellers, so 876 will not necessarily result in a net decrease in burdens for them</li> <li>• The largest portion of ITI member companies said 876 will have no impact on burdens</li> </ul> </li> <li><b>2. Successfully responding to an FSS solicitation is a large effort</b> <ul style="list-style-type: none"> <li>• Employees required to respond include expensive outside consultants plus at least ten different types of internal employees</li> <li>• Total of 480+ hours is required for proposal development per type of employee</li> <li>• These employees are billed at roughly a \$60 hourly rate (which is likely a conservative estimate)</li> </ul> </li> <li><b>3. Other impacts</b> <ul style="list-style-type: none"> <li>• There will potentially be more challenges to agencies' price determinations, price evaluations, and best value evaluations due to lack of scheduled pricing</li> </ul> </li> </ol>

<p><b>Jim Williams – November 17, 2020</b></p>	<p><b>Implementation Plan</b></p>	<p><b>I. Highlights &amp; Detailed Findings</b></p> <p><b>1. GSA should publish an 876 implementation and communications plan</b></p> <ul style="list-style-type: none"> <li>● 876 will have a large impact on: <ul style="list-style-type: none"> <li>○ GSA</li> <li>○ Agency customers</li> <li>○ Industry and industry associations</li> <li>○ Everybody watching this on the schedules</li> </ul> </li> <li>● 876 is such a major change that GSA should publish an implementation and communications plan</li> </ul> <p><b>2. GSA needs to set clear goals and measurement criteria</b></p> <ul style="list-style-type: none"> <li>● Procurement should be measured in terms of meeting the mission. GSA should ramp up the use of CPARS to work towards this goal.</li> <li>● Measurement criteria should be more specific than just “savings,” because circumstances change.</li> <li>● GSA should measure whether 876 really improves competition at the task order level by looking at impact on competition, small businesses, burden, contract and administrative cost, and entry into the schedules</li> </ul> <p><b>3. Decreasing confusion during implementation</b></p> <ul style="list-style-type: none"> <li>● GSA should assign one spokesperson for the 876 implementation initiative, whether that be Jeff Koses or someone from the Federal Acquisition Service</li> <li>● GSA should choose a single portal to answer government and industry questions, whether that’s the Interact website or another page, because industry and government will have a lot of questions during the implementation of 876</li> </ul>
	<p><b>Implementation</b></p>	<p><b>1. Implementation Options</b></p> <ul style="list-style-type: none"> <li>● GSA should implement 876 across the board and apply to all schedules</li> <li>● Alternatively, if GSA goes with staged implementation, it should implement on selected schedules/SINs first, specifically where the impact on labor rates is most volatile, to ensure the government continues to have access to the talent it needs</li> <li>● GSA should implement 876 on all other schedules on a contracting officer or agency discretion basis</li> <li>● GSA should transform the schedules program to one without hourly rate pricing</li> </ul> <p><b>2. Coordination with the Office of the Inspector</b></p>

		<p><b>General</b></p> <ul style="list-style-type: none"> <li>GSA should coordinate with the OIG regarding the price reduction clause and other changes</li> <li>Communicating about implementation via one voice will change a lot of existing jobs in the Inspector General's Office</li> </ul> <p><b>3. Impact on new and existing schedule holders</b></p> <ul style="list-style-type: none"> <li>GSA should not require hourly rate pricing from new or existing schedule holders for task order competitions</li> <li>GSA should not limit existing schedule holders if the 876 authority is used</li> </ul>
	<b>Keep Listening</b>	<p><b>1. GSA is well-known in the industry for its listening skills</b></p> <ul style="list-style-type: none"> <li>GSA should continue this listening campaign</li> <li>GSA should survey key stakeholders, including the acquisition workforce, industry, program officials, and others to help measure the success of 876</li> <li>GSA should consider survey, focus groups, and other methods of listening</li> </ul> <p><b>2. GSA should conduct a marketing campaign</b></p> <ul style="list-style-type: none"> <li>GSA should make sure potential new schedule entrants are aware of the changes to 876 via a marketing campaign</li> <li>This will ensure 876 actually results in the intended change of increasing meaningful competition, not just facade competitions</li> </ul>
	<b>Limited Use of a Portal</b>	<p><b>1. Williams is against the idea of a prices-paid portal</b></p> <ul style="list-style-type: none"> <li>A prices-paid portal will increase the burden on the contracting officer to award the lowest price.</li> <li>Awarding based exclusively on the lowest price can result in awarding to substandard contractors because "you get what you paid for."</li> </ul> <p><b>2. Where a portal could be useful</b></p> <ul style="list-style-type: none"> <li>GSA should only require use of a database of hourly rates paid when other than full and open competition is used or only one offer is received.</li> <li>The database should not require award to the lowest price, it should only ensure that the price is reasonable for the services the government is receiving.</li> </ul>
	<b>Benefits of</b>	<b>I. Highlights &amp; Detailed Findings</b>

<b>Roger Waldron – December 2, 2020</b>	<b>Increased Competition at the Task Order Level</b>	<ol style="list-style-type: none"> <li><b>1. Industry supports implementation of 876</b> <ul style="list-style-type: none"> <li>● The Coalition supports implementation of 876 because increasing competition at the task order level is where value is driven for customer agency missions</li> <li>● 876 will particularly help small businesses seeking to compete in the federal marketplace, and medium sized businesses who rely heavily on the schedules program to compete in the federal marketplace</li> </ul> </li> <li><b>2. Pricing considerations</b> <ul style="list-style-type: none"> <li>● Schedule pricing is very burdensome and serves as a barrier to entry for new technology and capabilities to enter the market</li> <li>● Schedule pricing is also less relevant than task order pricing</li> <li>● GSA should use 876 as a jumping off point for further streamlining of the acquisition process</li> </ul> </li> </ol>
	<b>Implementation Suggestions</b>	<ol style="list-style-type: none"> <li><b>1. Contract type</b> <ul style="list-style-type: none"> <li>● Section 876 is not limited to labor hour time and materials contracts. GSA can use 876 authority on firm fixed price contracts, contracts with team-based pricing, aggregate pricing, or other pricing that can be expressed as a function of time</li> <li>● Unpriced line items can be on the same contract with firm fixed price products</li> </ul> </li> <li><b>2. Implement quickly and simply</b> <ul style="list-style-type: none"> <li>● GSA should implement 876 quickly and simply</li> <li>● GSA should not use a pilot program because that would unnecessarily delay implementation.</li> <li>● 876 is complex and may require a phased implementation approach.</li> <li>● GSA may need to implement 876 at the option period or issue a modification.</li> <li>● GSA should not require hourly rates, price, or cost submissions at the schedule level.</li> </ul> </li> <li><b>3. Eliminate the price reduction clause</b> <ul style="list-style-type: none"> <li>● The price reduction clause should be eliminated altogether.</li> <li>● The Coalition estimates that the PRC incurs about a billion dollars a year in compliance costs (as a conservative estimate).</li> <li>● The PRC is a restraint on trade.</li> </ul> </li> </ol>
	<b>876 Addresses Schedule</b>	<ol style="list-style-type: none"> <li><b>1. Tyranny of low prices</b> <ul style="list-style-type: none"> <li>● GSA relying on formulaic and outdated pricing</li> </ul> </li> </ol>

	<p><b>Contracting Challenges</b></p>	<p>regulations like the PRC contributes to the tyranny of low prices in the services arena.</p> <ul style="list-style-type: none"> <li>● Artificially low prices are inconsistent with commercial practices.</li> <li>● Artificially low prices limit the government's ability to access cutting-edge service capabilities.</li> </ul> <p><b>2. Consequences</b></p> <ul style="list-style-type: none"> <li>● Firms may leave the schedules program or stop competing on the schedules in favor of open market solicitations because of the tyranny of low prices.</li> </ul>
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### ***Summary of Next Steps***

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- GSA Stakeholders from the Federal Acquisition Service (FAS) and GSA Office of Acquisition Policy (MV)Office of Governmentwide Policy (OGP) met in December 2020, to discuss a path forward to implementing Section 876 taking into account:
    - The written responses to the ANPR; and
    - The feedback from the Section 876 Listening Sessions as outlined in this document
  - Implementation Steps taken so far:
    - Steve Sizemore appointed as Program Manager
    - Integrated Project Team (IPT) established similar to the MAS Consolidation IPT
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