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

Improper Management Intervention in Multiple Award Schedule Contracts

Federal Supply Schedule 70 – Information Technology Contracts
Federal Acquisition Service

Report Number A120161/Q/6/P13003
June 4, 2013

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

REPORT ABSTRACT

OBJECTIVE
The objective of this audit was to review the circumstances related to FAS management intervention in contracting actions related to MAS contracts.

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Improper Management Intervention in Multiple Award Schedule Contracts
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WHAT WE FOUND

Finding - Improper Federal Acquisition Service (FAS) management intervention in Multiple Award Schedule (MAS) contracts resulted in inflated pricing and/or unfavorable contract terms, and undermined the authority of contracting officers.

WHAT WE RECOMMEND

The Commissioner, FAS, should:

1. Ensure that the contracting process is independent and free from FAS management interference due to contractor pressure. These steps should include:
    a. Requiring FAS management not to intervene in contracting actions in response to requests from contractors except for instances of misconduct or other serious administrative issues;
    b. Requiring FAS management to fully document all conversations and correspondence with contractor officials regarding specific contracts and offers, to include such information as date, time, participants, and specific details of information exchanged; and
    c. Issuing a memorandum expressing support for contracting staff making independent determinations, including decisions to not award contracts or contract extensions.

2. Take appropriate action to either renegotiate or cancel the Carahsoft and Deloitte contracts.

3. Take appropriate administrative action to address the FAS management and contracting staff conduct identified in this report.

MANAGEMENT COMMENTS

The FAS Commissioner concurred with the recommendations. Management's written comments to the draft report are included in their entirety as ***Appendix B***.

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

DATE: June 4, 2013

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

FROM: John F. Walsh
Regional Inspector General for Auditing
Heartland Field Audit Office (JA-6)

SUBJECT: Improper Management Intervention in Multiple Award Schedule Contracts
Federal Supply Schedule 70 - Information Technology Contracts
Federal Acquisition Service
Report Number A120161/Q/6/P13003

This report presents the results of our audit of management intervention in Multiple Award Schedule contracts. Our findings and recommendations are summarized in the Report Abstract. Instructions regarding the audit resolution process can be found in the email that transmitted this report.

Your written comments to the draft report are included in Appendix B of this report.

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.

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Introduction

In the course of performing Multiple Award Schedule (MAS) contract audits, the Office of Inspector General (OIG) identified numerous instances where Federal Acquisition Service (FAS) management, based on complaints from contractors, overrode contracting officer determinations without proper justification, pressured contracting officers to extend or award contracts, and reassigned contracts to different contracting officers. These instances of FAS management intervention included direct communications between contractors and FAS management, often without the knowledge and participation of the responsible contracting officers. In at least one case, FAS management interference resulted in a contract with higher prices and less favorable terms than those recommended by the original contracting officers. In other cases, interference resulted in questionable contract extensions. To more fully assess the extent and possible impact of these cases on the integrity of the MAS contracting process, we reviewed the circumstances related to some of these management intervention actions.

This report focuses on three large MAS contracts representing over $900 million in contract sales in calendar year 2011 (CY 2011):

- Oracle America, Inc., (Oracle) Contract Number GS-35F-0009T for software products, software maintenance, and associated services. Total contract sales in CY 2011 were $358,408,767.

- Carahsoft Technology Corporation (Carahsoft) Contract Number GS-35F-0131R for various information technology (IT) products and services. Total contract sales in CY 2011 were $432,024,376. Carahsoft currently represents 63 vendors under its MAS contract.

- Deloitte Consulting LLP (Deloitte) Contract Number GS-35F-0060L for IT services. Total contract sales in CY 2011 were $119,520,662.

The objective of this audit was to review the circumstances related to FAS management intervention in contracting actions related to MAS contracts.

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

Criteria

The Federal Acquisition Regulation (FAR) Part 1 includes a "Statement of guiding principles," as well as the authorities and responsibilities of the contracting officer.

FAR 1.102-4(a) states:

> Government members of the [acquisition] Team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with the

> Guiding Principles. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.

In addition, the following FAR citations outline the authorities and responsibilities of the contracting officer.

> No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met. [FAR 1.602-1(b)]
>
> Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. In order to perform these responsibilities, contracting officers should be allowed wide latitude to exercise business judgment. Contracting officers shall—
>
> > (a) Ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation;
> > (b) Ensure that contractors receive impartial, fair, and equitable treatment; and
> > (c) Request and consider the advice of specialists in audit, law, engineering, information security, transportation, and other fields, as appropriate. [FAR 1.602-2]
>
> Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions. [FAR 3.101-1]

The concentration of authority in the contracting officer is critical to maintain the integrity of the contracting process. FAR 4.1 requires that, “Only contracting officers shall sign contracts on behalf of the United States.” In addition to the FAR requirement of wide latitude, contracting officers must also complete educational and training requirements before being granted a contracting warrant. The FAR, therefore, vests significant contracting authority and responsibility in the contracting officer and ensures that the contracting process is independent from all impairments.

Results

Finding – FAS Management Intervention

FAS management[1] improperly intervened in the award and extension of MAS contracts, three of which are highlighted in this report. This intervention resulted in MAS contracts with inflated pricing and/or unfavorable contract terms and extensions where contracting staff had determined such a decision was not in the best interests of the United States. In addition, FAS management intervention undermined the authority and morale of GSA contracting officers. FAS management (1) allowed contractors to circumvent contracting officers when the contractors disagreed with contracting staff determinations, and (2) supported the contractors' positions, including reassigning contracts to different contracting officers. In each reassignment case, the new contracting officer awarded or extended contracts without properly addressing significant issues identified by previous contracting officers.

Although we have noted instances of improper management interference across several MAS Schedules, the three examples included in this report relate to FAS Schedule 70 Information Technology contracts. We will primarily focus on the actions of the Deputy Director and a Division Director (directors) of the Schedule 70 program.

Oracle Contract Number GS-35F-0009T

FAS directors' interference in the Oracle contract included undocumented discussions with Oracle representatives without the knowledge or participation of contracting staff, directives to the contracting officer to take actions contrary to the contracting officer's determinations, and reassignment of the contract to another contracting officer. The evidence shows that Oracle officials went over the heads of the contracting staff to FAS management to have contracting staff replaced and to obtain decisions favorable to the company. This intervention usurped the contracting officer's authority and resulted in the extension of the contract with questionable pricing, terms, and conditions.

The Division Director twice intervened by directing the extension of the contract, despite contracting officers' determinations that extensions were not in the best interests of the United States. The directors' explanation for extending the contract was that the volume of sales under Oracle's contract demonstrated a need by federal agencies. However, no examples were provided to demonstrate how government agencies would be negatively impacted if the contract were allowed to expire.

Initially, the Oracle contract was to expire on September 30, 2011. However, in early 2011, two GSA contracting officers assigned to the Oracle contract noted significant problems, and one of the contracting officers requested an audit by the OIG. In April 2011, the contracting staff informed FAS management of the problems with the Oracle contract including inappropriate exceptions to GSA contract terms and conditions. In an

[1] For this report, FAS management refers to Central Office FAS officials.

April 11, 2011, e-mail, the Division Director agreed that the issues regarding the exceptions were "of particular importance if we are considering an Option."

The OIG initiated an audit in April 2011 and on May 13, 2011, sent Oracle a data request. By letter dated May 20, 2011, Oracle stated it would not provide the requested information because it had not yet submitted an offer for the next contract option. On May 31, 2011, Oracle requested a modification to withdraw all of its products from the subject MAS contract. The modification was effective July 1, 2011. This action left only consulting services on Oracle's contract and eliminated over 60 percent of Oracle's reported contract sales, even though Oracle's contract stated that the remaining consulting services could only be sold in conjunction with (the removed) Oracle software products. On June 6, 2011, the contracting officer sent Oracle a letter stating that the company was required to comply with the OIG data request.

On June 29, 2011, the contracting officer sent a letter[2] to Oracle stating that Oracle's contract would not be extended and would expire on September 30, 2011. In the same letter, the contracting officer informed Oracle that many of its contract labor categories appeared to be outside the scope of the schedule and that its labor rates were "extremely high."

On August 22, 2011, Oracle's Senior Director of Government Affairs sent an e-mail to the Associate Administrator for GSA's Office of Governmentwide Policy that stated, "Regarding GSA. We're having a miserable time with our contracting officer on ge! tting [sic] our schedule contract modified. How would we go about getting a new one?" The GSA official asked Oracle if it was referring to a FAS contracting officer and Oracle responded that it was. Oracle also provided the June 29 letter and stated, "We find it a bit difficult when a CO is telling us which of our job titles do not qualify to be on a schedule. Can fill you in on the rest." On August 22, this e-mail chain was forwarded to FAS management.

The directors stated that they had numerous discussions with Oracle officials about the contract extension. However, the directors did not document these conversations and could not recall many specifics. E-mails indicate that one such teleconference was held on August 29, 2011. The contracting officer and contracting staff were not copied on this email or present for the teleconference.

Interviews and e-mails show that, after they were contacted by Oracle officials, the directors began questioning the contracting staff about the Oracle contract and the contracting officer's determinations. The contracting staff provided information to support their determinations. However, on September 20, 2011, the contract was reassigned to another contracting officer. The directors did not provide justification for transferring the contract to another contracting officer. In addition, the contracting officer who was replaced stated that the Division Director said, "Oracle is done with you as a CO."

[2] The OIG is not aware of any written response from Oracle to the GSA contracting officer regarding the June 29 letter.

On September 21, 2011, the OIG participated in a teleconference with the contracting staff and the directors. During the teleconference, the directors were informed of the many problems with the Oracle contract, including that Oracle: (1) refused to provide information requested by the OIG and the contracting staff, (2) had withdrawn all of its products from the contract as of July 1, 2011, and (3) does not sell its consulting services independent of its products. These issues were in addition to the concerns raised by the previous contracting officer related to unacceptable contract terms, very high labor rates, and labor categories not within the scope of the contract.

After this teleconference, the contracting staff told the OIG that the directors continued to pressure them to award a contract extension to Oracle. On September 29, 2011, the contracting staff informed the OIG that extending the contract for 6 months was not in the best interests of the United States but that the Division Director instructed that the contract be extended anyway. The contracting staff also notified the Division Director that they would not sign a modification to extend the contract. The Division Director instructed the contracting staff to prepare the modification and a determinations and findings (D&F)[3] to support the directors' decision to extend the contract. The Division Director signed the D&F and instructed the contracting staff to execute[4] the contract extension modification on September 30, 2011.

The directors ignored the concerns raised by the contracting staff. The directors stated that the contract was extended to continue service for government customers, but failed to explain how the extension continued service when Oracle had removed all of its product offerings and could not sell services without software products. The stated purpose of the extension was to allow time for Oracle to submit a new offer for evaluation and potential award. The document further stated that Oracle will cooperate with any requested OIG audit and that if the company failed to cooperate, the contract would expire on March 28, 2012.

The September 29, 2011, D&F did not adequately support the extension of the contract. For example, the D&F did not address the fact that Oracle removed all of its products from the contract and these products accounted for over 60 percent of sales. Oracle's removal of these products significantly diminished the directors' explanation that the large contract sales volume justified the extension. Also, the D&F did not address how Oracle would provide any services because its contract stated that services are only provided in conjunction with product sales. Further, the D&F stated, "On 09-23-2011 & 09-29-2011 by e-mail, [Division Director] received correspondence from Oracle indicating that Oracle would cooperate with a Pre Award and Post Award Audit." However, the D&F did not indicate how or when this cooperation would occur or the fact that Oracle had not yet provided data requested by the OIG in May 2011. Finally, the

[3] A D&F is required for special contracting situations such as sole source awards and temporary contract extensions. This document is required to demonstrate that the special contracting action is in the best interests of the Government.

[4] The Division Director stated that he could not execute the modification due to "technical issues" and directed regional contracting staff to execute the modification on management's behalf.

D&F did not address contracting officer concerns involving excessive labor rates and incorrect contract terms.

Problems with the Oracle contract continued during the extension. Oracle did not submit a new offer in October 2011, as company officials had previously agreed. In addition, Oracle failed to cooperate with the contracting staff and OIG to provide the data previously requested. By e-mail dated January 24, 2012, the Division Director informed the contracting staff that:

> There will be no direction coming from Crystal City regarding consideration of a subsequent Temporary Extension for this contract. This decision will need to come from you. You are the Branch Chief, and therefore, you will be making this decision. It seems probable that there may have to be another Temporary Extension, given that a new offer has not been received in our office to date.

Oracle submitted an offer on March 13, 2012. This offer was not significantly different from Oracle's existing contract and did not address the issues previously raised by the contracting staff. In addition, Oracle failed to submit requested information to the OIG.

On March 23, 2012, the OIG informed the contracting staff that Oracle had not addressed any of the previous contract problems and that Oracle, in fact, now had additional problems. The new issues since the contract extension included Oracle's continued sales of its software products after July 1, 2011, failure to timely provide a new offer, and refusal to provide previously requested records (resulting in the OIG issuing a subpoena on February 2, 2012). On March 23, 2012, a member of the contracting staff signed a D&F that concluded another extension of Oracle's contract was not in the best interests of the Government.

The directors again intervened despite the January 24, 2012, e-mail statement to the contrary. The directors confirmed that they had conversations with Oracle officials in March 2012, but again could not recall specific dates of the conversations or the details of the discussions. On March 28, 2012, the Division Director instructed a contracting officer in another region to extend Oracle's contract. This contracting officer had no experience with, or knowledge of, the Oracle contract, and executed this extension at the Division Director's instruction because the Division Director had informed the contracting officer that technical issues prevented him from executing the modification. The Division Director stated that he extended the contract to continue service to GSA customers and because the previous contracting officer's decision not to extend the contract had left too little time to resolve all open issues before the contract was to expire.

After the March 28, 2012, extension, the Division Director instructed the contracting officer (from the other region) to prepare a D&F. This D&F was not prepared until 6 days after the modification to extend the contract was executed and was backdated to

March 28, 2012. The D&F did not adequately support the extension by failing to address:

1. Oracle's settlement of a False Claims Act case for $199.5 million;
2. Oracle's failure to submit a new proposal by the first week of October 2011;
3. The contracting officer's concerns about Oracle's existing contract; or
4. Oracle's failure to comply with requests for documents by the contracting officer and the OIG.

The Division Director acknowledged that the D&F was not prepared on March 28 but could not explain why it was backdated.

After the second extension, FAS management decided that the Oracle contract should be cancelled. On April 17, 2012, contracting staff issued a cancellation notice for Oracle's contract. In response to this cancellation notice, Oracle withdrew its offer for a new contract. The contract cancellation date was June 8, 2012.

Carahsoft Contract Number GS-35F-0131R

FAS management intervention in the Carahsoft contract included undocumented discussions with Carahsoft representatives without the knowledge or participation of contracting staff, directives to the contracting officer to take actions contrary to the contracting officer's determinations, and reassignment of the contract to another contracting officer. This intervention usurped contracting officer authority and resulted in the lengthy extension of a contract with inflated pricing and other terms and conditions unfavorable to the Government.

Carahsoft's MAS Contract Number GS-35F-0131R was scheduled to expire on November 18, 2009, but has been repeatedly extended on a temporary basis and is still currently under temporary extension. The OIG conducted a preaward audit of Carahsoft's proposal for the execution of a 5-year option on its current contract. The audit, issued March 10, 2011, identified that Carahsoft failed to grant GSA its best pricing.

On February 15, 2011, Carahsoft submitted an offer for a new contract to replace its current MAS contract (as opposed to extending the current contract). The contracting officer requested supporting information for the new offer and attempted to address the pricing issues raised by the preaward audit. Carahsoft officials failed to provide the requested information but instead contacted FAS management directly. On March 30, 2011, the contracting officer sent an e-mail to the OIG that stated:

> The pressure is coming from my boss who has told me he doesn't want Carahsoft to call their Congressman. They have already called their Congressman before, so . . . my Division Director, said if we don't work with them (which means bend the rules that we have in place and make other vendors follow) that they will call the Congressman, and he doesn't

> want that. I just feel stuck between a rock and a hard place. I don't feel like Carahsoft wants to negotiate . . . they want to dictate. When I try to negotiate, or ask for information, they don't want to provide it, and [the Division Director] has told me they are going to call their Congressman, and it will come right back down to [their] or my lap to fix.

On April 6, 2011, the Inspector General informed the GSA Administrator, Deputy Administrator, and FAS Commissioner of the pressure that Carahsoft was exerting and stated:

> I am alerting you to this situation because it has serious implications for the contracting process. I know that you are firmly committed to acquisition integrity, and to ensuring that GSA fulfills its role as the premier procurement agency for the United States. Accordingly, I am calling this matter to your attention to ensure that no inappropriate pressure affects the process and that Carahsoft does not receive more favorable treatment than other similarly situated contractors.

However, the Division Director continued his pattern of intervention. On April 11, 2011, the Division Director provided Carahsoft officials incorrect information that contradicted some of the contracting officer's requests for information. For example, the contracting officer requested information from Carahsoft regarding sales practices for Carahsoft manufacturers and requested that the company remove the term "commercial end users" from its information because it does not sell to commercial customers. Carahsoft contacted the Division Director and in an April 11, 2011, response, the Division Director wrote, "I received a call from [Carahsoft] regarding the Carasoft [sic] clarification letter. [Carahsoft] stated that there were five issues of concern. I have addressed each." The Division Director then proceeded to directly address Carahsoft's concerns rather than instruct Carahsoft to comply with the contracting officer's instructions. The Division Director's response to Carahsoft sometimes contradicted the contracting officer, even though the Division Director did not have the full background regarding the negotiations. After reviewing the Division Director's e-mail to Carahsoft, the contracting officer wrote, "I have a reason for all of the guidance I have provided to Carahsoft, and it's based on my extensive knowledge of their current contract and all that I have been through with this company." In two separate e-mails to the Division Director on April 12, 2011, the contracting officer requested:

> In the future, will you please send [Carahsoft representatives] to me, and not answer their questions?
>
> Carahsoft wants us to make allowances for them. When I don't make allowances, they come to you…. If they don't get their way, they get upset – they run to you and it's become a pattern…and it's causing my authority as a CO to be circumvented…it looks as if they are succeeding at "dividing and conquering".

On April 12, 2011, the Division Director told the contracting officer:

> This is getting ridiculous. . . As a manager, it is your job to keep issues/problems self-contained and not have them constantly rise to my level. . . However, you need to take into consideration that Carasoft [sic] is not the average offer in-house. There is considerable industry influence when it comes to them, and quite frankly, I do not think that you realize that when their issues/problems rise to the Division/Center level and have to be explained.

The directors continued to directly speak with Carahsoft representatives. On July 27, 2011, the Division Director wrote to the contracting officer stating, "I know you are owed a response from Carahsoft by tomorrow. Whether it is the response you are requesting or not, under no circumstances will the offer be rejected at this time." On August 24, 2011, in response to Carahsoft discussions with the directors, the Division Director transferred the Carahsoft contract to another contracting officer.

The new contract specialist encountered the same problems with Carahsoft as those encountered by the previous contracting officer. On October 4, 2011, the contract specialist told the directors:

> The vendor's strong sales performance is a factor to contend with, but I am beginning to feel that [Carahsoft's] demands for special treatment of [this] company's offer are bordering on unethical because we are expected to circumvent the solicitation requirements such as TAA compliance and accurate representation of a vendor's sales practices. Until [Carahsoft] is ready to have an adult, 2-way communication about [this] company's offer with me, instead of acting like a spoiled child, my efforts to bring this case to closure will be futile.

On November 3, 2011, the contract specialist wrote:

> [T]here had been too many concessions given to this vendor even before the offer and the contract were assigned to me, so the vendor is emboldened to the point that he feels that it's either his way or the highway, regardless of what the data may indicate. Please let me know if the plan is to reject this offer in ORS, or if it is going to be transferred to another CO/CS. I also would like to request that the contract is also transferred to another CO/CS because any goodwill that I had left for the relationship with Carahsoft had been exhausted.

On November 4, 2011, the contract specialist reiterated, "The offer cycle time[5] continues to accrue on my account, and there is nothing further I can contribute to this case, therefore this offer needs to either be transferred to someone else or rejected."

However, on December 19, 2011, the contract specialist accepted Carahsoft's offer and awarded Carahsoft Contract Number GS-35F-0119Y. The contract specialist stated that the offer was accepted because the company agreed to change the basis of award customer. The contract specialist did not provide any further explanation of the change in position.

On December 22, 2011, the contracting specialist emailed Carahsoft with the following request:

> If you don't mind, could you please send a note to IT70 management to let them know you were pleased with my handling of your firm's offer? That would be really appreciated.
>
> My workload keeps growing and I've been asking for a contracting officer warrant for a while now because it would help me process contract actions faster. Your positive feedback on my performance would help speed up the process.

A Carahsoft official replied, "I would be glad to."

In January 2012, the contract specialist[6] received an unlimited contracting officer warrant.

Deloitte Contract Number GS-35F-0060L

FAS management intervention in the Deloitte contracts included undocumented director discussions with Deloitte representatives without the knowledge or participation of contracting staff, directives to the contracting officer to take actions contrary to the contracting officer's determinations, and reassignment of the contract to another contracting officer. This intervention usurped contracting officer authority and resulted in the award of a contract with inflated pricing and other terms and conditions unfavorable to the Government.

Deloitte Contract Number GS-35F-0060L was set to expire on November 5, 2010. Due to concerns about the contract the contracting officer requested an OIG audit of Deloitte

[5] Offer cycle time represents the period from offer receipt to contract award. Offer cycle time is a performance metric and is one of several factors considered during a contracting officer's performance evaluation.

[6] As of April 11, 2011, the contract specialist met education, training, and experience requirements to achieve a certified Federal Acquisition Certification in Contracting (FAC-C) Level III. GSA requires a Level III certification to obtain an unlimited warrant.

on October 14, 2010. The contract was temporarily extended several times and ultimately expired on October 23, 2012.

Deloitte submitted an offer for a new contract on September 26, 2011. Deloitte officials were dissatisfied with the negotiations of its offer for a new contract and with restrictions[7] placed on its existing contract. In addition, Deloitte objected to providing information relating to specific customers. On May 29, 2012, Deloitte officials met with FAS management to express the company's concerns. On June 8, 2012, a meeting was held with contracting officials, OIG audit staff, and Deloitte officials. During this meeting, Deloitte requested the contracting officer remove the restrictions on its existing contract; however, the contracting officer declined the request. On June 12, 2012, the Division Director instructed the contracting staff to transfer Deloitte's contract and offer to FAS Central Office so that these could be managed "closer to DC." On June 18, 2012, the Division Director assigned the Deloitte contract and offer to the same contracting official to whom the Carahsoft contract had been transferred.

In response to an OIG inquiry relating to why the contract was transferred, the Division Director wrote in a June 13, 2012, e-mail:

> In summation, the transfer of the contract and offer has no bearing on the Contracting Officer or Branch Chief whatsoever. As mentioned, a number of factors were taken into consideration regarding the transfer; however, the overarching priority is to ensure that, as we move forward, there is an equitable distribution of workload Center-wide.

The contracting officer who received the Deloitte offer wrote an e-mail dated June 18, 2012, "Is this another one like Carahsoft?" The supervisor responded, "Yes. There are issues and it needed to be assigned to someone else."

In interviews, the directors continued to assert that the transfer was made for workload management issues. However, upon questioning, the directors confirmed that no other contracts were transferred and that no workload management study existed that recommended the transfer of this particular contract. The contracting officer who received the Deloitte contract told the OIG that their supervisor had to reassign several of their current contracts because the contracting officer was already over-obligated. Eventually, the Division Director acknowledged that the Deloitte contract was not transferred due to workload management issues.

On July 19, 2012, the new contracting officer executed a modification to extend Deloitte's contract. This modification also eliminated the requirement for Deloitte to remove all BPAs under the contract within 90 days. The new contracting officer awarded Contract Number GS-35F-0617Y to Deloitte on September 7, 2012. The new contract had higher labor rates than the rates Deloitte previously offered to the prior contracting officer.

[7] These conditions required Deloitte to (1) transition all blanket purchase agreements (BPAs) off of the contract before the new expiration date, and (2) not award any additional BPAs under the contract.

The labor rates previously offered and subsequently awarded differed as follows:

Labor category	Increase
Principal/Director	14.4%
Senior Manager	7.8%
Manager	15.4%
Senior Consultant	18.5%
Consultant	5.6%
Analyst	11.4%

When asked by the OIG why the awarded labor rates were higher, the contracting officer had no support or explanation. In addition, when the OIG asked why some standard GSA contract language was changed in Deloitte's contract, the contracting officer stated that Deloitte would not agree to a contract without the revised language.

The contracting officer presented the OIG concerns regarding contract language to Deloitte officials. By contract modification dated December 5, 2012, Deloitte and the contracting officer agreed to change the contract to eliminate the unacceptable language. To date, there has been no change in Deloitte's contract labor rates.

As a result of the Division Director's directed transfer of this contract, the contract award was made at prices and terms less favorable to the Government than those offered to the previous contracting officer. The previous contracting officer's concerns were not addressed by the new contracting officer and the awarded pricing and terms did not fully protect the Government's interests.

Adverse Effect on Morale

FAS management's interventions in MAS contracts have an adverse effect on contracting officer morale, such as:

- A contracting official involved with both the Oracle and Deloitte contracts suffered a decrease in performance rating from a 5 in 2010, to a 4 in 2011, to a 3 in 2012.[8] The narrative of this employee's rating in 2012 was transcribed almost verbatim from the narrative for 2011 and, thus, did not support a decrease in rating from a 4 to a 3. When a FAS senior executive was made aware of this rating, FAS directors changed the rating to a 4.

- Several contracting staff stated that they feared for their jobs because they were trying to do the right thing and protect the taxpayers' interests. One employee working on a contract where FAS management intervened on behalf of a contractor stated, "This is one of those situations that can be career altering."

[8] The rating scale: 5 – consistently exceeds expectations; 4- often exceeds expectations; 3 – meets expectations; 2- partially meets expectations; 1 – does not meet expectations.

- Contracting staff emails support that staff were unhappy with management's interventions and also indicated that the contracting staff preferred to have contracts taken from them rather than compromise government requirements.

- In numerous discussions between FAS contracting staff and the OIG, FAS contracting staff have stated that GSA contractors know they can get whatever they want by going to FAS management. FAS contracting staff have further stated that they believe they have to award large contracts because the contracts generate a lot of revenue and management will not allow the contracts to expire or be cancelled.

FAS Procurement Management Review Reports Improper Management Intervention

The findings in this report are supported by an internal GSA acquisition review performed by the Office of Governmentwide Policy, known as a procurement management review (PMR). During our review, we obtained a copy of a PMR that identified significant and similar problems in the FAS MAS IT 70 program. In a PMR report dated July 26, 2012, PMR interviews with IT 70 staff revealed that FAS management "frequently overrules" contracting officers' determinations and assessed the impact of this finding:

> This results in a lack of alignment of authority with accountability. Such lack of alignment can result in poor morale, poor performance by acquisition personnel, and individual contracting actions that do not reflect the values and commitments of regional management…
>
> After 4 straight years of reviewing this office, with little to no change, the IT Center may not be committed to making the necessary changes to achieve acquisition excellence.

Recommendations

The Commissioner, Federal Acquisition Service, should:

1. Ensure that the contracting process is independent and free from FAS management interference due to contractor pressure. These steps should include:

    a. Requiring FAS management not to intervene in contracting actions in response to requests from contractors except for instances of misconduct or other serious administrative issues;

b. Requiring FAS management to fully document all conversations and correspondence with contractor officials regarding specific contracts and offers, to include such information as date, time, participants, and specific details of information exchanged; and

c. Issuing a memorandum expressing support for contracting staff making independent determinations, including decisions to not award contracts or contract extensions.

2. Take appropriate action to either renegotiate or cancel the Carahsoft and Deloitte contracts.

3. Take appropriate administrative action to address the FAS management and contracting staff conduct identified in this report.

Management Response

The FAS Commissioner's response to the report noted that the Commissioner was very concerned with the report findings and that actions are already underway to address the report recommendations. Management's comments are included in their entirety as ***Appendix B***.

Conclusion

FAS management improper intervention in the award and extension of MAS contracts resulted in contracts with inflated pricing and/or unfavorable contract terms and extensions where contracting staff had determined such a decision was not in the best interests of the United States. By allowing contractors to circumvent contracting officers and supporting the contractors' positions, including reassigning contracts to different contracting officers, FAS management undermined the integrity of the procurement process. FAS management actions also compromised the authority of contracting officers and adversely affected morale. An FAS procurement management review also supports these findings.

Appendix A – Purpose, Scope, and Methodology

Purpose

We initiated this audit because we identified instances of FAS management intervention in the award of MAS contracts and contract extensions.

Scope

To accomplish the audit objective, we reviewed specific contracting actions (both new awards and extensions) that included some large Schedule 70 Information Technology contracts. These contracting actions generally included contracts that were either audited by the OIG or has some type of OIG involvement.

The objective of this audit was to review the circumstances related to FAS management intervention in contracting actions related to MAS contracts.

Methodology

To accomplish our objective, we:

- Reviewed relevant criteria, including the Federal Acquisition Regulation and internal FAS guidance;
- Reviewed contract file documentation;
- Interviewed contracting staff and FAS management representatives;
- Reviewed contracting staff and FAS management emails pertaining to the subject contracts;
- Developed timelines associated with each contract; and
- Incorporated the results of contract audits associated with the subject contractors.

We conducted the audit between July 2012 and February 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

The scope of our work was limited to addressing the objective of this audit. Thus, our assessment and evaluation of internal controls was restricted to those issues identified in the Results section of this report.

Appendix B – Management Response

GSA

GSA Federal Acquisition Service

May 31, 2013

MEMORANDUM FOR JAMES HAYES
ASSISTANT INSPECTOR GENERAL
FOR ACQUISITION AUDITS (JA-A)

FROM: THOMAS A. SHARPE, JR
COMMISSIONER
FEDERAL ACQUISITION SERVICE (Q)

SUBJECT: GSA Draft Report, "Improper Management Intervention in Multiple Award Schedules Contracts" Audit Number A120161

Thank you for the opportunity to provide management comments to the above report. We appreciate the Office of Inspector General's work to ensure proper management of the Schedule 70 program. The integrity of the Federal Acquisition Service (FAS) procurement process is important to the work we do every day here at FAS.

Your report raises serious concerns and we have already begun taking action to address your recommendations. Below are the steps we have already taken and are planning to take.

First, I have required a management review of the Deloitte and Carahsoft contracts to determine whether they should be renegotiated and/or cancelled.

Second, I have taken personnel action by placing the supervisor alleged in your related report of investigation as having acted improperly on administrative leave pending our further review.

We will conduct a top to bottom review of the management controls, policy and guidance in place governing the FAS Multiple Award Schedule program and tie this to the recent issuance of several governance reinforcing instructional letters and procurement information notices that mandate training and documentation requirements for the entire FAS acquisition workforce, enabling our contracting staff to negotiate the best deals for the federal government (these letters and notices are listed and summarized in an attachment hereto, you can access them on eCat). I plan to have this review completed and the required actions indicated underway in July.

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405

I will also be sharing your final audit report and my response to it with all FAS employees to raise their awareness around these issues and to demonstrate my personal commitment to proper procurement practices and my personal support for our Contracting Officers and the important role they play in the FAS procurement process.

I am acutely aware that FAS operates at the intersection of offering its acquisition solutions to our federal agency partners to save them time and money, while at the same time ensuring the integrity of the underlying procurement process for the solutions.

As the new head of FAS, I have made it a top priority to focus this organization on ensuring proper business and procurement controls. As part of this year's performance plan, FAS managers will report to me on their progress on ensuring proper controls on a regular basis.

Please feel free to call me at (703) 605-5400 if you have any questions.

Attachment: "FAS Comments to Improper Management Intervention in Multiple Award Schedules Contracts"

FAS Comments to Improper Management Intervention in
Multiple Award Schedule Contracts

As stated above, the Federal Acquisition Service has taken several steps to ensure the successful operation Multiple Award Schedule (MAS) program. A number of instructional letters have been provided to FAS employees that address many of the report's recommendations. Below is an index of the instructional letters attached to this response.

(1) Instructional Letter 2011-02 provides templates for the mandatory Pre-Negotiation and Price Negotiation Memoranda and Final Proposal Revisions, and facilitates consistency in the award and administration of Schedule contracts. By providing templates, the workforce is equipped to comply with the FAR requirements for the establishment of pre-negotiation objectives, documenting the negotiations and documenting the contractor's understanding of the agreements reached during the negotiations.

(2) Instructional Letter 2012-10 and Supplement 1 to IL 2012-10 Required Training for the FAS Acquisition Workforce both list a number of training courses on the use of the MAS Program, mandatory for the FAS acquisition workforce. These training courses represent an initial step toward supporting FAS' long-term performance goal of enhancing workforce agility by ensuring that our acquisition workforce is increasingly knowledgeable and experienced in the use of all FAS acquisition programs by 2017. Relevant and up-to-date training on the various acquisition programs across FAS contribute toward achieving acquisition excellence and creating a more knowledgeable, agile and independent acquisition workforce.

(3) October 2012, the Schedule 70 program provided training on pre-negotiations and price negotiations memos, reinforced with role playing exercises to the IT Center Branch Chiefs. Beginning in Nov 2012, this training was expanded and made mandatory for all contracting staff.

(4) April 12, 2013, we issued Instructional Letter (IL) 2013-04 to all FAS Acquisition Activities entitled "Contracting Officer Responsibilities Pursuant to GSA Office of Inspector General Contract Audits" providing guidance to contracting officers on audit procedures. This IL describes the roles, responsibilities and authority of the contracting officer to realize cost avoidances or achieve recoveries identified by the IG in their contract review (i.e., audit) reports. The IL makes it clear that the "CO shall assess all of the information available, including the findings in these audit reports, and then make an independent decision on the contract based on all the facts." . On April 12, 2013, the FAS Office of Acquisition Management also issued Supplement #5 to IL 2011-12 providing updated templates for Pre Negotiation and Price Negotiation Memoranda for the Multiple Award Schedules (MAS) Program. These mandated templates provide a blueprint for contracting officers in documenting decisions made with regards to audit report findings and how these findings are considered when developing and achieving

negotiation objectives with contractors. In addition to the ILs, the acquisition workforce will receive training on the use of pre-award and post-award contract audits in an on-line continuous learning module (CLM) course titled, "Awarding and Administrating Multiple Award Schedules." The course is scheduled to be hosted through the Defense Acquisition University (DAU) and the Federal Acquisition Institute (FAI) by the end of this fiscal year.

(5) IL 2013-04 and Supplement #5 to IL 2011-12 provide guidance to contracting officers on following audit procedures, and highlights the contracting officer's responsibility in maintaining open lines of communication with the IG and documenting rationale behind his/her decisions at every step of the process. The FAS Office of Acquisition Management has already requested that monitoring of compliance with the guidance in these ILs (e.g. notification requirements, documentation requirements) be added to the procurement management reviews (PMRs) conducted by the Office of Government-wide Policy.

(6) As part of the MAS Modernization, contracting staff in the Schedule 70 program are beginning to utilize the Commercial-of-the-shelf pricing comparison tool "Price Point" which provides contracting staff with an automated, web based tool to assist them in evaluating the prices of all existing and future GSA Advantage product catalogs. Guidance on the use of Price Point was provided to the FAS acquisition workforce through Procurement Information Notice (PIN) 2013-02, issued on November 7, 2012.

Appendix C – Report Distribution

Acting Administrator (A)

FAS Commissioner (Q)

Acting FAS Deputy Commissioner (Q1)

Assistant Commissioner for Integrated Technology Services (QT)

Acting Director of IT Schedule Program (QTF)

FAS Chief of Staff (Q0A)

FAS Controller (BF)

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

Audit Liaison (QB0A)

Audit Liaison (QB0AB)

Assistant Inspector General for Auditing (JA)

Deputy Assistant Inspector General for Investigations (JID)

Director, Audit Planning, Policy, and Operations Staff (JAO)