
Transcript of GSA Session

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JOINT FAMA/FEMSA MEETING
FRIDAY, OCTOBER 10, 2008

GIFF

I am really pleased to introduce our next group of speakers, primarily Josh Sawislak, who is the senior advisor to the administrator of GSA. He is also currently the acting chief of the Office of Emergency Response and Recovery for GSA.

And Josh has with him today Shaloy Castle-Higgins, who is the deputy director of the Greater Southwest Acquisitions Center, and Tricia Reid, who is the national program manager for State and Local Disaster Recovery and Purchasing.

JOSH

I want to thank Giff and Jerry for inviting us here today. I kind of wear two hats at GSA. One is as an advisor to our acting administrator Jim Williams. Jim wanted me to thank you for the work that you do because it's very important that our nation is protected and the work that we all do together. And it is not only when we think about protecting our nation, homeland defense, but it's protecting it from all hazards. At GSA we take that very seriously because that's the business we're in, is to help other agencies, both federal and state and local, do what their mission is, to support their mission. Our mission is to support their mission, so we share that, and I wanted to let you know that there are things that we do at GSA in this program that I'm going to talk about today, which is our Cooperative Purchasing Program, that are different in some of our other programs. How many people out there actually know what a GSA schedule contract is? Okay, well, that's almost half—that's good. So, basically, this is a large IDIQ (indefinite quantity, indefinite delivery) contract. I think we have 18,000 schedule contracts throughout the whole program. GSA does not actually sell anything under the schedules program. No one buys anything from GSA. They only buy from those 18,000 vendors. Our job in the schedules program is to connect the buyer and the seller. And whether that buyer is

another federal agency or, in limited areas, a state or local agency. And we've had some experience with this program, this cooperative purchasing program, over the last five years in the information technology side—in the computer side, where this program has been in place. And our job really is to make sure that the buyers and the sellers are operating efficiently. We try to make this a more efficient process on both sides. Because as we all know, the transaction cost, the time it takes to get the buyer and the seller together to make that deal happen is lost to everyone. That's not something that we all benefit from. What we benefit from is connecting the right information and the right goods and services with those buyers so that they can use that equipment and they can benefit from those services. I know that's why we're all in this business: is not to spend a lot of time filling out paperwork, but to actually help them get their job done.

So, I want you all to understand and to remember that we're not here to change your business process, we're not here to tell you how you should do your business. We're here to help both the buyer and the seller come together. That's really the important thing about this rule making. So, we're in this process for this program we call "cooperative purchasing." And I want to talk little about today Schedule 84. I brought the best people in the country to talk about this. And I have some wonderful folks here. Shaloy, as Giff mentioned, is the deputy director of the acquisitions center out of Fort Worth, Texas. And that's the acquisition center that runs Schedule 84, so if you have a Schedule 84 contract, your contracting officer works for Shaloy. So she's here to help me talk about these issues and to help answer some of your questions.

Sitting next to Shaloy is Tricia Reid. Tricia is our national program manager for disaster recovery and state and local program. She works in the schedules program management office and her responsibility and that office's responsibility is

for all the schedule programs. Not just Schedule 84, not just Schedule 70, but all of our schedule programs. And all of our disaster recovery programs, all of our state and local programs. And she can touch on those issues. And these are the important people to know because they are going to be the people who are going to be working with you over the next several years as this program matures and to answer your questions.

And I will guarantee to you right now that if you have a question, and you contact one of these ladies, they will get back to you.

With that, what I'd like to do is start to address some of your actual questions on this. And I want to make one more kind of statement before we do that, because this is a rule-making process. And we issued on September 19 the interim rule for cooperative purchasing for Schedule 84. What that means is that Congress passes a law, the president signs that bill into law and then the federal agency responsible for it issues a regulatory process to implement that program. This was done as an interim rule, which means it takes effect immediately, but it does open up a comment period and we are very interested in your comments on that. I am not here today as part of the regulatory process, the rule-making process. That is a formal process. If you have comments on that rule, you can give them to us electronically. There's a Web site you can go to at Regulations.gov and we'll provide all this information to you and it's also in the rule. You can fax it in or send it in by regular postal mail. That's the process to actually make comments on the rule. We're happy to talk to you about stuff. We'll answer questions, but please understand it is not the rule-making process. So if you ask a question today and you get an answer, that's great and that's a good thing for you to know, and we're going to try to give you as much detail as we can, but if you want to make a comment, an official comment, during the rule making, you have to do that either through the Web site or through fax or regular mail. So I wanted to make that clear to everybody.

With that why don't we start on the questions.

GIFF

Are products that are on the schedule required to meet national standards such as NFPA?

SHALDY

They are not required to meet the NFPA standards, but we do have some items on the Schedule 84, many items do meet the NFPA standard and the contractors can promote it as such and you can ask them to show, you can require anybody that's making—the customer can—to meet those standards.

GIFF

Can manufacturers from other countries get on the schedule and, if so, are there restrictions or conditions that allow them to get on the schedule?

JOSH

Manufacturers from any country that is compliant under the Trade Agreements Act are allowed to sell on schedule and so we have some. There are a series of regulations as to what agencies can buy through federal contracting. It deals with point of manufacture, it deals with—there are things that are transformed, that are manufactured in one place and then transformed in another country that may meet it. And we can get you some information on the Trade Agreements Act and how that becomes compliant. But there are a number of countries that currently sell goods and services through our schedules program.

GIFF

How is most-favored pricing defined?

SHALDY

Most favored pricing—when we receive an offer in from a contractor with their paperwork, they're required to disclose all the pricing terms that they sell under, all the pricing levels; we want to see their whole realm of how do you market and how do you sell the products. What's the best price you sell at? What's the most expensive price you sell at? And then we negotiate with you based on—we look at the government's buying patterns, if there's some history for that particular product, that brand. If you've already sold to the government. We look at what we feel our buying patterns are going to be and we compare that to your customers that you've listed and how you sell that commercially. And then we negotiate the basis upon which the award is made and we say, "Okay, we think we compare to the person, XYZ, that receives this discount and we're going to buy in similar patterns." Maybe some of your customers have signed an agreement and they

agree that they will buy at a certain level of product and, as a result, they get a discount. If we have never reached that level, there's no way we're ever get to that level, we're not going to ask for that pricing. So we negotiate the pricing that your award will be based on and that ends up being your most-favored customer price that we use to make the award at.

JOSH

Let me follow up on that a little bit and we can expand on that. Because I know this is a big issue for people. Most-favored customer pricing is the most-favored customer who is like us. So, and I think something Shaloy said there is really important, which is, if you have a customer who buys 80% or 60% of your production, and that's a deal you've had going, and they guarantee it, they're going to buy it every year. And they've got a minimum guaranteed that they're going to buy. And we're saying, "Yeah, it's an indefinite quantity, indefinitely delivery contract, and we might buy some but, you know, there's no substantive guarantee," they're not a similar customer. But if you have a big customer who, you know, they buy from you, when they buy from you they buy a lot, but they don't always buy from you, that's probably more similar to what the government, to the situation we're going to be in, and we want to look at that pricing. The relationship between a manufacturer and their dealer—that dealer is not, in all probably, the most favored customer, because that's a different relationship. We're actually looking at someone similar to us. Not the relationship you have with your dealer. And so it's important. But it's important that when you're negotiating these contracts, and these are negotiated procurements, so anyone can get one, it's an open solicitation, any manufacturer or value-added reseller who's been in business for three years can go and get one of these contracts. It's an open solicitation. So we're not saying we're only going to go out and get five people who sell this item. If we've got five people who sell this item, if we've got 50 people who sell this item, then we want you to have access to this contract, and when you negotiate that pricing, we want you to come in and be prepared to tell us, you know, to understand who your buyers are and understand that relationship. The more information you have, and the more you can show us, the better position you're in. Because what we're looking for, honestly, for the American

people is a reasonable deal on both sides, that this is fair and reasonable pricing. We're not saying you've got some special arrangement with somebody who's guaranteeing that they're going to buy half your production—that's a different arrangement from what we're talking about. So it's important to remember that.

TRICIA

And, just so you'll understand, I think it's important for you all to understand that we're not interested in setting up a relationship where the contractors fail. Without the contractors, whom we consider as our partners, GSA doesn't exist. Eighty percent of our vendors across the schedules program are small businesses, so we're used to looking at all sorts of different relationships, past performance. But our end goal is for you all and the end users to find value in what we're doing.

GIFF

Thanks. Josh, you mentioned dealers and distribution channels. In our industry, really the primary goods-to-market model does depend on local distribution. And some of the products are highly technical, require a good deal of sales and education on the front end before the customer makes a purchase decision, because of liability issues requires in-service training before you can put the product in their hands so that they can safely use it, and also requires after-sales service and regular maintenance. And I think one of the things that's of great concern to our audience here is, you know, we still have to have that piece in the chain. We aren't typically wanting to sell technical, highly-specialized products from the manufacturer directly to the end user because there's a lot of hazard involved in that. **Is there a mechanism within the schedule or within GSA so that the manufacturer-distributor-dealer relationship can stay intact and they can still earn a living without getting pinched out?** And I think that's a big concern to our audience.

JOSH

Absolutely, Giff. And there's a couple of different ways this can work. And I'm going to let Shaloy give you a little bit of background on how we do that under schedule 84 and how we've done it under other arrangements. But we've done that with the state and local market, with this program prior to the expansion of the schedule 84 with

schedule 70. Schedule 70, if you'll remember, is the IT schedule. Now, if you're buying a thumb drive, that doesn't require a lot of training. ... That's a pretty simple thing, you know. It's going to be delivered, it's a good, it's pretty much a commodity. That's fine. If you have a high-end accounting system that you buy, it better come with training and support because if it doesn't, you just spent a lot of money and it didn't do you any good. And so in the IT world, a lot of that is done through value-added resellers, a lot of that is done through authorized reps. In Schedule 84, the same situation exists. It actually exists with the federal agencies as well. Just because it's the federal government buying something doesn't mean they know how to use it. It doesn't mean they know how to maintain it. And the federal agencies rely upon the distributors and the authorized reps to support that equipment on the federal side and it is not different. When we open up these schedule contracts to state and local, it's the same relationship. They still need the support, they still need the maintenance, and the contract can recognize that. So I'm going to turn it over to Shaloy and let her talk a little more about how you do that.

SHALOY

Okay, when you make your offer and you disclose your pricing and your discount structure, if you're coming in as a manufacturer, one of the things that you can do is say, "I want to have participating distributors." And, of course, we're going to say, "What are they going to do and what pricing do you want to offer for them?" And it depends on the value-added services that they're going to offer. But we look at those and if it's something that's high tech, that requires training, you absolutely couldn't sell this product to someone without going out and showing them how to use it and how to service it and all of that, and you have your distributors do that locally or whatever your set up is. Then you come in and we talk about it and you say, "Okay I'm the manufacturer, I'm going to sell the product, but this distributor has to come out and do the product support that comes with it." Whatever that support is going to be, whether it be fitting the mask or teaching them how to use it if it's a defibrillator or whatever the case is, whatever training needs to be done. And we allow you reasonable cost to go allow the distributors to do that. So we're going to give you an allowance for that value add. If it's a value add that the

customers are going to need, we need you to do it, and your distributors do that for you. Whatever your marketing model is, if it's something that you as a manufacturer sell direct to end users, usually if they do that it's a straight product and there's no training required. Just it's a real simple transaction. But when you have the high-tech items that require the services we allow for that and we make arrangements for you to have the participating distributors listed on your contract. It's up to you how you want to get the orders to them. If you want to have the order go directly to the distributor, if you want the order to go to you as the manufacturer and then you feed it to your distributors. You can have the payment go to your distributor if they take the order. You can have the payment go to you and you pay your distributor. Whatever arrangement that you need to make. Whatever you're doing, we try to model your business as you're doing it now for your commercial customers. And that's what we're trying to put in place.

JOSH

That's a really important point. We don't want to change your business process because if we change your business process you're going to become less efficient and that doesn't do us any good because the price goes up. Our goal is to make this more efficient, lower the transaction cost. All these 18,000 contracts that we've set up or the 1,400 contracts on schedule 84 that we've set up, that's all investment that all of us have made as federal taxpayers. That's what we do. We're trying to leverage that, we're trying to expand the value of that to the state and local market in response to the statute that was passed by Congress and signed by the president. So that's really the goal here. But again, we don't want to change your business process, but you need to understand those, so the most important thing you can do is to get in. If you're a distributor, work with your manufacturer. If you're a value-added reseller and you want to have your own schedule contract, because maybe you sell across seven different manufacturers and you add a lot of value—you train, you service—that's great. We'd love to have you as a schedule holder in your own right. But we want you to come in and work with your contracting officer so that they understand how your business process works. If they're not getting it, if it's a problem, talk to Shaloy or talk to Kelly Stoker. They're going to help you get that process figured out, because

that's the important thing for us, that we all understand it so that we're all on the same page.

GIFF

I just want to follow up and then I want to turn it over to the audience. To get specific about this whole mechanism that allows distribution or dealers to be in the chain. **Let's say in your normal business relationship with your distributor they have a discount structure that's 30% off of the suggested list price, is it possible, then, to come and negotiate a contract, document to you folks that the distributor needs to live in that 30% window to support the demo equipment, the service and training that his people have to get in order to be technically competent with the product, to provide in-service training to make sure nobody gets hurt and to be able to provide post-sales service and loaner equipment and all the rest of that? So if a manufacturer can adequately document that to you, then the price on the schedule could actually exist in exactly the same discount structure as we're currently doing business?**

JOSH

Let me make sure that I understand what you're saying. So, you've got a manufacturer and they sell and the suggested retail price of the good is \$100. And the distributor buys it for \$70 and resells it to the customer for \$100—

GIFF

Or \$95, or it depends on how hungry they are. They may sell it for \$72.

JOSH

Right. Now, again, that's where we have to look at that relationship and what the history of those sales are. If, other than some weird occurrence where somebody said, "I'm going to buy your whole production run," you know, or, "I'm going to guarantee something," they've always sold it for \$100. They've just never discounted it. It's the old Sony TV model. You know, you bought it for suggested retail. Then, when we look at that most-favored customer pricing, we look at all those customers out there, they're all paying \$100, the fact that the manufacturer sells it to the distributor for \$70 is irrelevant to that most-favored customer pricing, because that's the distribution arrangement to do the sales and service and training. And again, that margin

covers that. If all the distributors buy it for \$70 and pretty much they all sell it for \$90. Suggested retail is \$100, but everyone knocks 10% off because that's what we all do, we're going to probably say—and again I'm talking theoretically here ... —if everybody pretty much sells it for pretty much \$90, \$90 is going to be the most-favored customer pricing. Now, once you establish that, if you're going for your schedule contract and somebody comes in and they say I want to buy 10,000 of these things, but I don't want to buy \$90, and you're selling through our contract, and you sell it for \$85, that does not trigger the price reduction. That does not change that pricing. You can always offer a discount through the schedule contract. That doesn't affect that pricing model. If you do it outside of the contract, that's a different issue. But as long as you offer that discount through [the contract], we're not going to penalize you for offering that discount through our contract. But if all of a sudden you decide that, you know what, it's cheaper to manufacture these things now or there's more competition or I'm not selling any of them for \$90 I'm going to start selling them all for \$85, we want that deal. And that's all we're asking for is, when you change your pricing, you have to provide that change to us as well. That's the term of the contract, so the most-favored customer is really is that most-favored customer but not the deal between the distributor and the manufacturer.

SHALDY

And absolutely we're going to allow that difference through that distributor to allow him to go do what he needs to do to make the training and the services and the sales, and make that living. Because it's required. It's exactly how we do it now.

QUESTION

I have a series of questions which I believe most of them could be answered with a yes or a no.

Will a contractor receive a negative review if they choose to not accept orders outside the executive branch?

TRICIA

No. ... The program is voluntary. Two parts for the vendor. One, you choose to accept the modification to participate in the program. Two, you have five days, if it's not a credit-card order, to decline an order. And you don't get a negative

report card. It actually says in the rules that you can decline the order.

JOSH

Let me just add on to that, because there's two important pieces. One is, if you don't sell anything through the program ever—federal agency, state and local agency—and you get one of these contracts, eventually they'll catch up with you and say, "Why are we maintaining this contract?" So you do have to sell some stuff to somebody in order to keep the contract. And the second piece is that it's a voluntary program, you can decline the order, but once you agree to participate in an order, so if you put a bid in on something, then you're agreeing to participate, if you then don't come through, that's an issue. But that requires you to proactively say, Yes, I will sell that to you at this price.

TRICIA

So if there's competition being done and you receive a request for quote or statement of work, you have the opportunity to say, "I don't want to submit a quote, I don't want to participate." But if you submit a quote and then your quote gets accepted, then you are bound. Once you submit a quote, you are bound to that quote.

QUESTION

Within the schedule program?

TRICIA

Yes. For the most part it's a normal procurement rule.

QUESTION

Within the schedule program is the question.

JOSH

Yes. Within any of our programs, if you agree to sell something—so I send out, I go to three vendors and I say, I want to buy SCBAs, and you give me a quote, then you can't come back later after I accept your quote and say, "Well, I don't want to participate now."

TRICIA

But if a state or local government just sends you an order, then you have the opportunity to say, "I can't fill this right now, or I don't want to."

JOSH

Or, "I choose not to."

QUESTION

Okay. So that's the clear distinction. If they just send an order gratuitously, then you have the five days or the 24 hours if it's a credit card to make a decision.

TRICIA

Correct.

JOSH

Now, that's true for state and locals. Now, with the federal it's different.

QUESTION

That's correct. But if they actually solicit and then you respond with a GSA off—

JOSH

Yes.

TRICIA

With a quote.

QUESTION

—what if they just, as they do now, just solicit a request but they don't mention anything about GSA?

JOSH

Unless they ask you to give that quote through this contract, then you haven't triggered that. It would have to be a quote for a GSA contract.

QUESTION

Next question. How will the \$2,500 minimum obligation by the ordering activity be enforced? ... You stated that in the rules there's a \$2,500 minimum obligation by each ordering activity for the period of the contract, so say I receive an order for \$500 in the first year of my contract, how is the enforcement of the other \$2,000 that I'm owed if they never place another order?

SHALDY

If you get a schedule contract, if you receive an award under that schedule contract, you're guaranteed for the life of that contract to receive—and, I know this is a lot—\$2,500 in sales for the life of that contract. If you don't receive that at the end of the contract, you can request the difference. You know, if you receive \$500 then you can request the difference between the orders you received and the \$2,500.

QUESTION

But I believe the language says the “ordering activity”, so therefore it becomes in my mind the obligation of the City of Miami.

SHALOY

No, that’s not the intent.

QUESTION

So that’s not your interpretation?

SHALOY

Yeah. It’s just for the contract itself.

QUESTION

Will you be requiring new authorization letters from the manufacturers that have in the past specifically authorized the dealers to accept orders outside the executive branch?

SHALOY

We hadn’t intended to.

JOSH

Because they’re not required to. So, again, they don’t have to accept those orders outside the executive branch, so there’s no requirement.

QUESTION

Okay, that’s clear. Thank you. Just two more, if I may.

JOSH

That one was “no.”

QUESTION

Is the GSA considering implementing the Barry amendment in their processes?

JOSH

Not that I’m aware of.

QUESTION

Okay. That’s like a “no.”

TRICIA

Yeah.

JOSH

Well, you said “considering.” So I can only tell you what I’m aware of.

QUESTION

Exactly. I understand that. Will state and local customers need to obtain an activity access code in order to place orders?

TRICIA

No. That’s only for our global supply program.

SHALOY

That was a “no.”

TRICIA

Yeah. No.

JOSH

We got at least two of them right.

TRICIA

No, that’s only when you’re buying through our stock program that orders are coming through GSA and being shipped from our warehouses. These are direct vendor-customer relationships so the payment can be accepted in any manner that you accept as a vendor.

QUESTION

Okay, and last question. I believe I know the answer but I think it would be good and helpful for everyone. So as a GSA contract holder you receive a purchase order and it designates in some way that they’re applying to your GSA contract. That’s the obligation then of the contract holder to pay that and to report the industrial funding fee?

JOSH AND TRICIA

Yes.

QUESTION

If they don’t put it on there, but it happens to be the GSA pricing, when the auditor shows up, how is the auditor then going to interpret that?

SHALOY

Yes, and we talk about that at—we have industry meetings that we invite you to in Fort Worth if you have a schedule contract and we have industry meetings and if you want to get on that mail list, let me know. And we talk about that a lot. And what we do is we have a canned statement that we recommend that you prepare and put on your orders so that you can have a clear tracking mechanism when you’re accepting and quoting on orders. A canned statement that says, “This

price is offered under the GSA schedule,” or, “This is not considered under the GSA schedule and is an open-market quote.” So that it’s clearly you can establish in your paperwork trail whether or not it is intended to be a GSA order. And then if you that and the buying activity comes back and says, “No, I want this under schedule,” you can get that straightened out up front. That’s what we recommend is that up front you address that. Is this a schedule order or do you want this open-market and then you put on that order so that you’ve got—or a code or something—it’s better if you just put it out there clearly so it’s on every order that you have.

JOSH

And this is important for two reasons: one is for tracking and audit purposes on the IFF, but also for looking at the price reduction issue, because remember if you offer a price reduction under a schedule contract, that has no effect. If you offer it open-market, then we will consider it in that evaluation.

TRICIA

And also for the customer to understand if it doesn’t have the contract number on top, it does not bring along with it all those terms and conditions. You’re just getting the price if it’s bought off the schedule.

GIFF

Let me just jump in here because I need some clarification on your last statement, Josh. Again, realizing that it’s more manufacturer/distributor relationships and the distributor is setting the open-market price. I’m doing my business with my distributor and he’s reselling it and he’s determining whether it’s going to be \$100, \$95, or \$75. I don’t have control over that. My transaction is between me and the distributor, and what he’s doing in the open market to the end user, would that impact my schedule or my pricing on the schedule? When I can’t control what price point he chooses to sell at?

JOSH

It depends on whether or not he has his own schedule contract or he is selling through yours.

GIFF

Let’s assume he does not. He is selling through mine.

JOSH

It could. And you’ve got to look at that arrangement—about how they’re selling. Now if he’s selling through your contract, and he’s actually selling through the schedule, it doesn’t, because it—

GIFF

I’m saying, let’s assume he’s not using the contract because he’s selling to, you know, a volunteer fire department who may or may not be able to access the contract.

TRICIA

It depends on what your most-favored customer pricing is based off of—what other customer. Now, if you’re selling to a customer group that’s outside the customer relationship you negotiated between, then it doesn’t trigger it. But if you’re selling to a customer that’s within that group that you negotiated your schedule price against, then it will trigger it. And it sounds like your distributors will have to understand that ceiling price that you negotiated with GSA. You can sell anywhere in between, but that ceiling price is going to come back and trigger us under the price-reduction clause. So if they understand that one number.

JOSH

The volunteer fire department issue is one that we can talk some about. I’m sure it will come up in a question pretty soon. ... We have to look at that issue, and that is something that’s different in this industry than is the case in a lot of industries, is that a large part of your market are these organizations which we think of, you know, I think, from outside as part of the state and local community but are really charitable organizations as they are set up and so are not instrumentalities of the government. And that is an issue that we need to do a little more work on on our side. And I hope that, I can’t solicit comments under the rule-making process, but I personally hope it comes up as a rule-making comment, because I think we need to think long and hard about that relationship. This program allows you to sell to state and local governments or any instrumentality thereof. Which means that if it’s the school board or if it’s the, you know, a multijurisdictional authority, that’s fine, but if it is a

third party who has an arrangement with you to provide a service, even if that's a charitable organization, that's different. And I'll give you an example even on the federal side. The Red Cross and other volunteer organizations support the national response framework, but they are not federal agencies. And so they typically, except in some narrow definitions, cannot buy through schedule programs. So that's an issue we're dealing with on the federal side as well.

[question missing on video]

JOSH

We said earlier we don't want to change the business process. It's not just the business process from the vendor side, it's the business process from the buyer side as well. Now, the people who are buying this equipment may very clearly say, "I will only buy things that meet NFPA standards." And that's great. And then they can clearly only buy—if that's their bottom line—they can only buy. As federal agencies, there are certain requirements that we have that we buy and we set those standards. We don't push those standards down to the state and local entities. We don't tell them what they can and can't buy. We tell them, "here's what we do, here's some guidance that we follow. You're welcome follow this, we encourage you to engage in competition," but we don't require it. And this is probably a federalism issue as much as anything else. So we're not requiring state and local governments to follow a specific standard for what they buy, because the decision is really up to that state and local government, what standard they want to follow and they feel is most appropriate. They may decide, "I only want to buy goods that are made in the United States." Fine. Clearly they can do that. They can use this program. They can say, when they put out their request, "I'm only interested in [these] things. I don't want to buy equipment from a foreign country. Now, there are certain foreign countries that can't sell through the schedules program because they are not signatories to the GATT and the Trade Agreement. They're noncompliant with the Trade Agreements Act. China is an example of that. They're actually a signatory to the GATT but they haven't signed one of the pieces that allows them to do that. There are obviously waivers for certain goods that are only available and there are certain things that are assembled in other countries, and sold in the U.S. But I think the

key point here is, while you make a very good argument, it's not something that the federal government is ready to push down to the state and local governments and require them to follow those guidelines. ...

SHALDY

Let me state it another way, and that, right now, before any of this happened, if an end user needed an item, they can go and seek out sources from other countries. They can buy from wherever they want now. And they don't have to—they might not comply with NFPA. It's no different under the schedule. It's the user has to know what they want, what their requirements are. And just like if you were buying it open market, without the schedules ever entering into the picture, you can go, maybe you can get a cheaper price from another country. You do it with medicine, now. You know, you can go to another country and get a lower price. You know why. And the same thing with these. It's cheaper because it doesn't have to meet all the certs and the standards. They can do that now. And the same thing under the schedule. If it's a requirement they need, through the schedule you can say, when an end user comes to you, "I'm buying this and I only want NFPA-standard equipment." And then you buy it. So, from our perspective that's why—and to flow that down to the end users that maybe—because we have people who are using it in different countries and there are different situations. We give everybody the flexibility to buy what meets their needs. And to require the standards that meet their needs.

TRICIA

And how your products show up on our GSA Advantage, which is our online purchasing tool—it's sort of our Amazon.com—those descriptions, pictures, and everything are put up are written by you all. So you can put that in the first—NFPA certified, American made, here's a picture—so when the state and locals search, they can see that right away. "Okay, these are the vendors I want to be looking at. I don't want—" And under our e-library it shows where the location of the contract is—the manufacturer. So if it's in the U.S., it'll be a U.S. destination.

SHALDY

And we ask you to disclose with your offer, what standards, are there any required standards if you're offering a product, are there any standards

that are mandatory that your products comply with. And we do ensure if it's a mandatory standard that the product complies with it and that you list that.

QUESTION

But along those lines, first of all, NFPA is not a mandatory standard. It's a voluntary standard. Second of all, what happens, and what I can envision along with [Shaloy's] comment, is it doesn't have to be a foreign country. It could be a domestic builder or whatever. And we now have a builder that comes in that is saying I'm going to build on price. And they come in with a truck that does not meet the NFPA standards. The problem is that, when that gets put on GSA, and you've got a very unsophisticated fire department in Podunk Junction, and they look at this and they say, "You know what? It's endorsed by the federal government. Because it's on the GSA contract, it must be okay." And it does not say on there—they're not required to say in the description that this product does not meet NFPA or does meet NFPA or meets UL or doesn't meet UL or whatever the standard that applies it meets. They're not required to say that. And if you're not going to require that, I think that you at least ought to require them to say what standards it does meet or does not meet and list that in the description of that.

JOSH

I hear where you're coming from on this, and it is an issue. The problem with us defining the standard for the industry, then we're in the business of setting that standard and, trust me, in Washington we actually make enough regulations. Making more probably is not in anybody's interest right now. We're not the best people to set that standard and requirement. I think industry is in a better position to say what are the standards that they should follow. I understand it can be confusing and we need to look at that issue as to how we clearly state what is and what isn't provided in the individual bids. But certainly if the industry, the purchasers—not necessarily the manufacturing side but the buying side, the end-user side—says we all need to meet this standard, that's really the most effective way to enforce it. It's hard for us to tell people—and we're going to get a lot of pushback if we try, I'll be honest with you—to tell state and local

governments, "You have to comply with this standard or we won't put it on our schedule."

TRICIA

I have a question. Can we create an NFPA icon or designation for vendors who have?

JOSH

My concern about that is—and while NFPA is basically the standard and everybody recognizes that—there are other folks—I mean, UL could make the same argument—lots of other people could say. Or, you know, I could go off and invent my own standard and say, "Well, I want you to put that up there, too." If industry comes back to us, if the buying industry comes back to us and says, "This is something we've all agreed to set as a standard and we want you to put that on there," then we can certainly look at that issue.

QUESTION

I think that's what we're saying. We're saying, the standards already exist; we're not asking the federal government to generate standards. But if you're going to become a dealer for fire trucks, then I think you have the responsibility to label the product properly so that the buyers who are purchasing these vehicles know what they're getting.

SHALOY

You bring up a very good point. I've done the schedules so long that I do forget that the buyers look at it and think, "Oh, if it's on schedule then it just means it's just perfect and I don't have to do anything else. Just go buy it." One of the things that we could do is make the ordering instructions clearer, especially for those state and local on the marketing material that we put out and state that the items are on GSA but GSA in no way endorses or says that just because an item is on schedule that it meets any voluntary standards. And I guess we dangerously assume that people know that—it's a voluntary standard. So before you buy it, you better check to make sure that they meet any standards that, unless it's a required standard, that you better make sure—anybody buying it—that it meets the standards that they need. But we can put in the literature that we put out that, just as an informational, that they do not meet voluntary standards and can maybe give some examples and state that it's up

to the user to ensure that the standards required are met.

GIFF

Would that be appropriate to submit as a comment during the rules-making phase, to ask that that sort of language be added, particularly to a schedule 84 item? Is that the appropriate venue for that?

JOSH

You can certainly do it through that process. We'll talk about this issue. We'll take that issue back. By putting something in as a comment during the rule-making process, it creates a formal process to look at that. So I encourage you to do that, if there's something you feel strongly about, and this is obviously a big issue.

QUESTION

Two questions. First of all, if a manufacturer already currently has products on schedule 84, do they have the ability to designate they'll participate at the federal level but not the state and local level?

TRICIA

Yes.

QUESTION

And how do they do that?

TRICIA

If you decline the modification that came out—it was FX 60, it was the last mass modification that went out to all vendors—if you decline the modification, then you are not participating in the state and local.

JOSH

And then buyers will not contact you about state and local stuff.

QUESTION

Second question is, how does the GSA plan to market the opening of schedule 84 to state and local agencies?

TRICIA

Well, we currently work with a lot of state and local associations, so we're going to continue to work with National Association of State Procurement Officers, NACO, NIGP, NEMA, and also work with industry associations to make sure—because you guys are the ones out in the field, you know,

selling the products and services and making sure everyone gets what they need. So we're working with industry associations. We put together a bunch of different marketing materials which we can actually e-mail you guys—some of the fact sheets and information that we've already put together. We're working on a strategic communications plan, not just for this program, but we actually have six state and local programs across the agency that we work sort of to promote together. So state and locals know that it's a tool in their toolbox. Use it if it's useful, don't if it's not.

QUESTION

We [my company] don't sell direct. We sell through authorized distributors because it's a technical product, it involved demonstration, it involves lots of safety issues. And we certainly don't want to get into extending credit. So we want to do this through our authorized distributors. So when we get back, what are the two or three things we need to do to make sure that we're doing the right things as a manufacturer so that we can participate through our authorized distributors?

SHALDY

Do you have a contract now? You say your distributors have contracts and sell direct to the government—

QUESTION

Yes, we do everything through distribution internally.

SHALDY

Okay, so they hold the contract with the schedule?

QUESTION

Yes, some of our distributors do. And there would be an authorized group of distributors that we would participate through.

JOSH

Do you as a manufacturer hold a contract with the government?

QUESTION

We do not.

SHALOY

And your question is, through the authorized distributors...

QUESTION

What are the two or three things we should do when we get back to make sure our distributors can participate through GSA?

SHALOY

They need to accept—now, for the state and local they need to go accept this modification that they recently received notification that it's out there. We do them electronically and they just need to go in and accept that modification and agree to accept the orders and allow them to be contacted for quotes on state and local. They have that ability to either decline or accept that modification to their contract.

GIFF

A quick follow up, if I may. Most of our distributors operate in defined territories—a state, a section of a state. So, if at the distributor level somebody gets on the contract and their responsibility is the state of Arizona, and somebody contacts them from New Jersey, does the schedule allow for them to say, “Whoops, not my area of responsibility. I can’t supply that”?

SHALOY

It does. When you have—the schedule requires that when you're making an offer that it be nationwide coverage. But what we do is, when you have that situation, you can come in as a manufacturer, and then you can give the coverage through your distributors. That's what we've talked about earlier—you can allow the distributors then to provide the coverage. This gentleman, I believe, I would venture to guess that your participating distributors provide nationwide service.

QUESTION

[inaudible] ... by region or by state.

JOSH

Okay, it sounds like that the easiest way for you and your authorized dealers/distributors to participate in this program would be for the manufacturer to get a contract to specify the relationship with the distributors and then you'd

have one schedule contract, the distributors would sell through that contract. Then you would need to get a schedule contract for the manufacturer including the relationship with those distributors. Now if the distributors already have schedule contracts, if they don't sell nationwide, they probably don't already have schedule contracts. So you could as a group participate in this program by getting that schedule contract from the manufacturer. And the important thing to remember is when you make that solicitation fully explain the relationship with the distributors, how that works from a business perspective, so that when we set up that contract it recognizes those relationships.

QUESTION

We do have a GSA contract, and I wanted to just get some clarification on some comments that were made. Does the manufacturer have to grant authorization for an authorized reseller to enter into a contract with GSA?

SHALOY

Yes.

QUESTION

Okay, so the idea of them having a contract on their own requires authorization of the manufacturer?

SHALOY

Yes.

TRICIA

They need a letter from the manufacturer saying that they have authorization to sell your product under the schedule.

QUESTION

Okay. Now when an authorized reseller—when there are a set of circumstances where the authorized reseller goes outside the agreed-to pricing, could you elaborate a little bit more on how that may affect the contract overall over time?

SHALOY

Let me clarify. You asked if a reseller had to have authorization in order to make an offer under the contract.

JOSH

Under your contract?

QUESTION

That wasn't my question really. My question was, does a dealer have to first have authorization from the manufacturer to have their own contract?

SHALOY

Yes. Under schedule, they have to have a letter of authorization from you that—

QUESTION

The manufacturer lists other authorized resellers under its own contract, and one of those authorized resellers, for whatever reason, goes outside the pricing agreed to in the contract—lower—and notifies the local municipality that we are not then buying under the GSA contract. How might that then come around and affect the primary contract holder?

SHALOY

It depends on who your customer is set up under your contract as the most-favored customer. It depends on who we compared the government's award to—the basis of award for your customer. Because when we went through we picked that customer that we were going to—that wanted the same discounts and the same pricing structure. And if at any time you sell to that customer at a lower price, then our price also should go down. So it's important that the distributors that you authorize to participate on the contract

understand that relationship. But if it's an authorized sale under the contract, they can sell, they can lower their price at any time. If it's an authorized person, you don't have to worry about it. The price-reduction clause doesn't come into effect.

JOSH

The important thing in that is, if they sell outside of the contract, that can have an effect. If they sell through the contract, they can always lower the price and it doesn't impact the price reduction.

SHALOY

That's exactly right.

TRICIA

I think the big point is, be very aware of who you're negotiating your most-favored customer price, what category of customer you're negotiating that price at. And make sure that your authorized resellers understand, if you go and sell to this category of customers lower than the schedule price and you mess up that relationship, we then have to turn around and lower our schedule price to equal out that relationship again. So do not do this. This is your bottom-line price or this is the highest price you can sell it at. You can always under schedule sell lower. But off the schedule, if it's to this category of customer, you will trigger that price reduction.

Questions on other topics

DISASTER PURCHASING

QUESTION

Josh, could you explain, or point out to the group a little bit, about your and Tricia and Shaloy's role in the national response team and how that would affect what we do here, like with Ike and some other things.

JOSH

Our relationship with FEMA and the national response framework, sure. ... GSA is a partner with FEMA under the national response framework. We're the co-lead for emergency support functions 7, which is logistics and

resource support. Basically, we serve as FEMA's buying arm and support. Now FEMA does some procurement in-house, but we do deploy our contracting officers to joint field offices and to regional emergency-response centers and we also do a lot of purchasing and logistics support out of the National Response Coordination Center. In that role, we're essentially buying for FEMA in their response. And we're supporting the recovery efforts. But if you remember when we rewrote the national response plan into the national response framework, after Katrina, one of the things that we recognized in that is that the

federal government is not really positioned and appropriately resourced to be the primary responder for any disaster. The people who are positioned and need to be resourced to do that are the local first responders. They are the ones who are going to be the boots on the ground in the minutes after, the hours after, and the days after. In a major catastrophe, when those resources get overwhelmed, the federal government can rally its forces to come in and support that. And I think we've been pretty successful in the last year in working with Chief Paulson and Admiral Johnson and the folks at FEMA. I've been very pleased to see that we've moved very far forward and we've been very well coordinated with state and local resources. So, it's been a partnership. We will continue to buy goods and services to support the federal effort, but that's GSA acting as procurement officers for other federal agencies. And a lot of that purchasing, honestly, comes off of schedule. A lot of it is prepositioning of goods for disaster response and some of it is stuff that they need in the early days of response and as we get into recovery. But that's us acting in our other role as actually purchasing agents for federal agencies. Under this program we're setting up these contracts and other agencies can come in and use them. But we're pretty smart guys so we actually use our own contracts, too.

TRICIA

I was just going to take time and talk about disaster recovery purchasing for a second. One of the other programs that we have available to state and local governments is the Disaster Recovery Purchasing Program, which came about in the 2007 defense authorization act. And it allows state and local governments to actually buy off of all GSA schedules, both in advance of and in the aftermath of major disasters and acts of terrorism to facilitate recovery from one of those events. So schedule 84 has been a part of this program as well. It covers all 140 [or] 141 schedules that we have. We've had close to 76% of our 18,000 vendors decide to participate in that program. We do coordinate with FEMA on that as well. FEMA actually just came out with a fact sheet, because I know one of the main concerns of state and local governments after a disaster is, "Well, I needed to buy this. Am I going to get reimbursement from FEMA if I buy off of schedules?" And so FEMA came out with a fact sheet guidance, a few-page document, posted on the FEMA Web site, that

explains how state and locals can order off the schedules under disaster recovery purchasing in order to get that public-assistance reimbursement. So, you know, FEMA, we've worked with NEMA—National Emergency Managers Association—and some other state and local associations to make sure this makes sense for them as well.

JOSH

I think that an important thing that Tricia said is that these are opportunities for folks to buy off these programs. But remember these are all voluntary programs. And they're voluntary on both sides. The state and local folks have to want to use this contract, and the vendors have to want to sell. If you're a vendor and you don't want to participate in this program, you don't have to. There's no requirement to. And there is nothing that ties back the government agency to using this program if they don't want to. There's no tying arrangement between the grant, there's no tying arrangement between the program for the cooperative purchasing program. In fact, what the fact sheet that Tricia was talking about actually explains is that even if you use this program and you want to seek reimbursement under public assistance, here are the things that you have to do in order to qualify for that grant. But it doesn't in any way say if you want to get money from the FEMA you have to buy through GSA or you have to buy from this vendor. So that's important to remember. It's voluntary, it's permissive language. We've set these contracts up, we've all invested in them to set them up, and we're offering them if they are valuable. Now, some state and local governments, I'll be honest with you, have said, "You know what? We don't want to do it that way, we want to do it our other way." Great! Some states have actually set up their own versions of the schedule contract and they have their own process and they've got their own contracts. They might use us, they might use their own stuff, but they have to make that decision. But, it's voluntary and if it makes sense to use it, then we say it's available to you.

THE PURPOSE OF GSA

QUESTION

At the very outset of this meeting, you said that the reason for this whole GSA schedule thing was to put together the end user and the seller. And the implication in that statement is that the buyer is not capable of finding their equipment, what they want, and the seller is not capable of connecting with the buyers. So in setting up this “be good, in the middle” kind of agency, schedule, whatever you call it, and collecting a fee for putting the two together, the assumption there is that you are sanctioning or otherwise saying these are okay, cool deal, and they’re on the schedule. So what you just said now is contradictory to what you said at the very beginning. I’m having a big difficulty understanding the federal government as business people.

JOSH

Why are we in the business of procurement? And the reason that GSA is in the procurement business is that under federal law we were actually set up to do that. And our job is really to help federal agencies—and, in certain areas,

state and local agencies—do acquisition. And to make that more effective and efficient, leverage the buying power of the federal government. There’s a whole bunch of key words in there. We’ve done that through the schedules program. By opening up the schedules program to state and local governments, Congress has asked us to allow state and local governments to benefit from the investment that we have made in setting up these contracts. Again, we’re not saying that sellers can’t find buyers and buyers can’t find sellers. What we’re saying is that we’re trying to make it easier for them to do that transaction. And we’re trying to make it more effective for the government as a whole to cooperate amongst itself and provide better information, provide better pricing, and to ensure that everybody’s getting a good deal and that it’s fair on both sides. So that’s why we’re in that business. It’s not that we think it’s broken, it’s that our mission is to actually make it more efficient. Now, we can argue about whether we do that or not and that’s a whole separate issue. But that’s why we’re in that business.