



# Department of Veterans Affairs Office of Inspector General

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## Review of Federal Supply Schedule 621 I - - Professional and Allied Healthcare Staffing Services

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## Acronyms

AL	Acquisition Letter
BPA	Blanket Purchase Agreement
CSP	Commercial Sales Practices
CY	Calendar Year
FAR	Federal Acquisition Regulation
FSS	Federal Supply Schedule
FTR	Federal Travel Regulation
FY	Fiscal Year
G&A	General and Administrative Expenses
GSA	General Services Administration
GSAM	GSA Acquisition Manual
IFF	Industrial Funding Fee
MAS	Multiple Award Schedule
MFC	Most Favored Customer
NAC	National Acquisition Center
NTE	Not to Exceed
OAL	Office of Acquisition and Logistics
OCR	Office of Contract Review
OGA	Other Government Agencies
OIG	Office of Inspector General
PNM	Price Negotiation Memorandum
RFP	Request for Proposal
RFQ	Request for Quotation
SIN	Special Item Number
SOW	Statement of Work
VA	Department of Veterans Affairs
VISN	Veterans Integrated Service Network

## **Executive Summary**

### **Introduction**

The Department of Veterans Affairs (VA) Office of Inspector General (OIG), Office of Contract Review (OCR) reviewed contracts awarded by VA under Federal Supply Schedule (FSS) 621 I--Professional and Allied Healthcare Staffing Services. Our review identified deficiencies in the way the VA has been awarding, pricing, and acquiring services under 621 I contracts. This report presents our findings and makes recommendations for improvements in the awarding of 621 I contracts consistent with the objectives of the FSS Program.

### **Background**

In February 2001, VA issued its first solicitation under FSS Schedule 621 I. Under this schedule, VA issues Multiple-Award Schedule (MAS) contracts to provide temporary physicians, nurses, and allied healthcare staff to Government facilities. Under 621 I contracts, each healthcare specialty is priced at fully loaded hourly base rates, which can include direct labor costs, fringe benefits, overhead, profit, taxes, insurance, and a 1 (one) percent Industrial Funding Fee (IFF) to be paid to the FSS Program. In addition to the base rate, 621 I contracts may also include pricing for overtime, shift differentials, weekday or weekend on-call fees, and holiday rates. Government ordering activities acquire 621 I services by issuing task orders against these MAS contracts, in accordance with the FSS contract terms and Federal Acquisition Regulation (FAR) Subpart 8.4.

The 621 I Schedule has grown rapidly since its inception. As of the end of fiscal year (FY) 2008, the 621 I Program has had over \$2 billion in FSS sales. The 621 I Schedule includes 59 Special Item Numbers (SINs), and several SINs cover multiple healthcare specialties. Procurement responsibility for the 621 Schedule rests with VA's Office of Acquisition and Logistics (OAL) National Acquisition Center (NAC) in Hines, Illinois.

In 2008 and 2009, OCR completed six reviews of 621 I contracts. Two of these reviews were pre-award reviews of proposed contract extensions, and four were post-award reviews. Prior to these reviews, we had also surveyed nine 621 I contract files in order to obtain an understanding of the 621 I Schedule and the methods the NAC had been using to establish price reasonableness under 621 I contracts. At the time of the survey, these nine contracts represented over 53 percent of total sales under the 621 I Program (four of the six reviews we subsequently completed in 2008 and 2009 were pulled from this sample of contracts).

We found that the NAC's methods for awarding and pricing contracts under the 621 I Schedule were failing to adequately establish fair and reasonable pricing and were not achieving a key objective of the FSS Program—that is, to achieve "Most Favored Customer" (MFC) pricing, or pricing to those customers purchasing under similar terms and conditions as the Government, by leveraging the FSS's volume buying power.

Because of these concerns, we determined that a capping report was necessary in order to pursue recommendations regarding the 621 I Schedule overall.

## Results

Our review determined that:

- The NAC has been negotiating national "Not to Exceed" (NTE) contract rates for 621 I services. However, in the commercial marketplace, pricing for temporary healthcare (locum tenens) services is very task order specific, dependent on factors such as the location of the services, the specialist provided, the duration of the task order, and market demand. Under FSS pricing policies, FSS Contracting Officers should determine the price reasonableness of proposed FSS prices through comparison to an offeror's commercial practices. Because national NTE pricing is not a commercial practice in the healthcare industry, the NAC has no means for determining fair and reasonable prices for NTE FSS prices and, therefore, cannot comply with the basic requirements of the FSS program for awarding contracts.
- NTE pricing is also not consistent with the FSS Program goal of achieving a fair and reasonable price by pursuing MFC pricing, or pricing comparable to those customers purchasing under similar terms and conditions as the Government. As interpreted by the NAC and 621 I contractors, the NTE price is essentially a ceiling or worst case price, rather than the best or lowest price offered to comparable commercial customers. Because the pricing for locum tenens services is very task order specific, and pricing within specialties can vary considerably, contractors will not negotiate FSS ceiling rates that are below the rates they would offer on most task orders. Thus, for a given contractor, the FSS NTE rate will likely be at or near their most expensive rates offered, rather than their least expensive or MFC rates.
- The Commercial Sales Practices (CSP) disclosures required under the 621 I Solicitation are inadequate for determining price reasonableness. The CSP section of the vendor's offer is intended to provide the foundation and justification for the Contracting Officer's decisions and actions for negotiating, awarding, and administering the contract. Under the 621 I Solicitation, vendors are asked to supply CSP information that has no correlation to its pricing practices and provides no means for assessing the reasonableness of a national NTE price.
- NAC Contracting Officers have used inadequate price analysis methodologies to determine price reasonableness on 621 I contracts. The two primary tools used by NAC Contracting Officers for evaluating offered 621 I prices have been: (1) comparison to other awarded FSS prices for the same services; and (2) comparison to national market surveys. The first method is flawed because it rests fair and reasonable pricing determinations on reasonableness judgments under earlier awarded NAC contracts, which we found were not adequately established. The second method is flawed because the surveys are only being compared to one component of offered pricing--direct labor--rather than the entire offered price. Also, the locum tenens

marketplace is not comparable to the salary information typically available in market surveys.

These deficiencies deprive Government ordering activities of one of the main benefits of the FSS Program--the ability to consider the FSS price a fair and reasonable price when evaluating offers for 621 I task orders. Accordingly, ordering activities that issue task orders at or near the FSS NTE prices may be paying more for healthcare services than necessary.

Although VA ordering activity Contracting Officers are not responsible for the shortcomings we identified at the FSS level, they are responsible for issuing task orders in accordance with FAR Subpart 8.4 and the FSS contract terms, and we found that they were not. The FAR specifically allows purchasing entities to consider the FSS prices as fair and reasonable. Under FAR Subpart 8.4, Government ordering activities are required to take steps to obtain the “best value” to the Government when placing task orders under FSS contracts that require a statement of work. We found that VA ordering activities were requesting quotes and negotiating prices for 621 I task orders at “All Inclusive” hourly rates, which combine the proposed labor rates with other direct costs (such as travel) into one overall rate. By combining these items into one all inclusive rate, ordering activity Contracting Officers are unable to properly evaluate the price reasonableness of either labor or travel costs, the latter of which must be in accordance with the Federal Travel Regulation (FTR). The use of all inclusive rates, therefore, increases the risk that VA ordering activities may be overbilled for healthcare services and/or pay for travel costs that were never incurred or were unallowable.

The deficiencies identified above, as well as others, prevent OCR from performing effective pre- and post-award reviews on 621 I contracts. In an FSS pre-award review, we verify the accuracy of an offeror’s CSP disclosures and assist the Contracting Officer in identifying suitable customers for price comparison. We cannot perform these steps if the CSP format is flawed and national NTE pricing is not a commercial practice. Also, OIG pre-award reviews evaluate which customer(s) could serve as tracking customers under Clause 552.238-75 Price Reductions. However, the 621 I Solicitation lacks an effective Price Reductions Clause, and no tracking customers have ever been established under 621 I contracts. Similarly, we cannot perform effective post-award reviews, because we cannot examine contracts for defective pricing damages (because NAC Contracting Officers relied on price analysis techniques that did not rely on the offeror’s CSP disclosures) nor can we pursue price reductions damages (due to the absence of tracking customers).

## **Conclusions**

We find that NAC Contracting Officers cannot establish fair and reasonable pricing for national NTE FSS prices for 621 I Services. Because price reasonableness is not being adequately established, and ordering activities often rely on the FSS prices in awarding task orders, the Government may be paying more for healthcare services than is necessary. In addition, VA ordering activities are failing to establish best value pricing

on 621 I task orders because of their use of all inclusive rates, which mask the true costs for labor and travel expenses.

## **Recommendations**

We recommend that the Deputy Assistant Secretary for OAL direct the NAC to:

1. not award any 621 I contract unless the Contracting Officer can determine that the prices offered are fair and reasonable;
2. eliminate national NTE pricing as a pricing objective, and to establish pricing objectives under 621 I contracts that are consistent with the goals of the FSS Program (MFC pricing, or the best pricing to commercial customers purchasing under similar terms and conditions as the Government);
3. revise the 621 I Solicitation's CSP format to require disclosure of information relevant to the above;
4. use price analysis methodologies that place reliance on the 621 I CSP disclosures, once revised;
5. cease using comparisons to existing FSS prices and/or national market surveys as methodologies for establishing price reasonableness; and
6. inform all FSS customers that they should not rely on current 621 I NTE prices in making best value determinations, until such time as the above recommendations are implemented. Instead, FSS customers should be advised to make best value determinations based on either: (a) adequate price competition among FSS contractors, or (b) open market competition, if adequate competition among FSS contractors cannot be achieved.

We also recommend that the Deputy Assistant Secretary for OAL direct VA ordering activities to:

7. cease issuing task orders under 621 I Schedule contracts with all inclusive rates.

Once these recommendations are implemented, OCR will be able to conduct effective pre- and post-award reviews of 621 I offers and contracts, in a manner consistent with our reviews under the other FSS Schedules the NAC administers. More importantly, ordering activities will be able to rely on the pricing as fair and reasonable as required by FAR Subpart 8.4. OCR recognizes that implementing these recommendations will be challenging, given the nature of the healthcare services marketplace, and may significantly alter the size and scope of the 621 I Program. OCR is ready to work with the NAC to identify the best solutions for implementing our recommendations.

### **Agency Comments**

The Deputy Assistant Secretary for OAL agreed with our findings and recommendations. OAL will direct the NAC to take appropriate actions to implement Recommendations 1 thru 6, and will issue instructions and policy to VA ordering activities to implement Recommendation 7. We consider these planned actions acceptable, and will follow up with their implementation. See Appendix A for the full text of the Deputy Assistant Secretary for OAL's comments.

*(original signed by:)*

MICHAEL GRIVNOVICS  
Director, FSS Division  
Office of Contract Review

## Introduction

### Purpose

The objective of our review was to determine whether the Federal Supply Schedule (FSS) 621 I Schedule is achieving the pricing goals of the FSS Program--that is, the establishment of fair and reasonable prices based on a contractor's Most Favored Customer (MFC) pricing, or based on pricing to a contractor's commercial customer purchasing under similar terms and conditions as the FSS. Additional objectives were to evaluate whether: (1) the price analysis methodologies used by National Acquisition Center (NAC) Contracting Officers are sufficient to establish price fair and reasonable prices; (2) the FSS pricing goal of Not to Exceed (NTE) pricing is consistent with commercial practices in the healthcare industry; (3) the 621 I Solicitation's Commercial Sales Practices (CSP) format is adequate to allow the Contracting Officer to make a price reasonableness determination; and (4) ordering activities are placing orders against 621 I contracts in accordance with the contracts' terms and the Federal Acquisition Regulation (FAR).

### Background

#### The 621 I Schedule.

Commercial and government healthcare facilities have a constant need for temporary healthcare services. Temporary personnel are used to address situations such as staffing shortages in hard-to-fill rural areas or in highly competitive markets; short term vacancies caused by vacation or sabbatical of regular medical staff; and seasonal staffing shortages. Companies that provide temporary healthcare staff may employ the specialists directly or subcontract for their services, the latter situation being most typical for physician specialists. Physicians may work temporary or "locum tenens" assignments in order to experience different practice or geographic settings, as a temporary measure while searching for a permanent position, or to scale back their workload prior to full retirement.

The NAC first issued a solicitation for the FSS 621 I Schedule in February 2001, under Request for Proposal (RFP) Number 797-FSS-00-0115. When the first RFP was issued, the 621 I Schedule was for "Professional Medical Healthcare Services." In 2002, the name of the schedule was changed to "Professional and Allied Healthcare Staffing Services." This change was made to include those healthcare professionals that fell outside the medical or nursing professions.<sup>1</sup> The 621 I Solicitation has undergone three major revisions since its inception, with the last revision being issued in October 2007.

Under the 621 I Schedule, pricing for each specialty is awarded at fully loaded hourly base rates, which can include direct labor, fringe benefits, overhead/general and administrative (G&A) expenses, profit or fee, payroll taxes, insurance, and a 1 percent

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<sup>1</sup> "Allied Health" is an umbrella term used in the healthcare industry to cover professions that require an individual to get specific training and be credentialed through certification, registration, and/or licensure.

Industrial Funding Fee (IFF). In addition to the hourly base rate, 621 I contracts can also contain negotiated rates for overtime, weekday on-call, weekend on-call, holidays, and shift differentials. The 621 I Schedule currently includes 59 Special Item Numbers (SINs), and several SINs cover multiple healthcare specialties.

Ordering activities acquire healthcare services through the issuance of task orders. In accordance with FAR Subpart 8.4, ordering activities are required to prepare a Statement of Work (SOW) and issue a Request for Quotation (RFQ) to FSS contract holders that carry the SIN or SINs they are seeking, specifying the number of hours needed, the period of performance, and other information. Under FAR Subpart 8.4, ordering activity Contracting Officers do not need to make a separate determination of fair and reasonable pricing, because the General Services Administration (GSA) has already determined the FSS schedule prices to be fair and reasonable.<sup>2</sup> However, for orders above the micro-purchase threshold, ordering activity Contracting Officers shall solicit quotes from at least three FSS contract holders and select the candidate that represented the best value to the Government.

The 621 I Schedule has grown rapidly since its inception, as shown in Exhibit A of this report. In fiscal year (FY) 2001, the 621 I Schedule had total sales of just \$98,809 on four contracts. As of February 2009, the 621 I Schedule had 296 active contracts, and in FY 2008, the 621 I Schedule recorded over \$529 million in sales. Overall, the 621 I Schedule has recorded over \$2 billion in sales between FY 2001 and FY 2008.

#### FSS Contracts and Price Reasonableness.

Prior to awarding an FSS contract (and prior to contract modifications to add items/services or increase contract pricing), offerors must provide the Contracting Officer with various CSP disclosures, including whether the contractor is offering the Government its MFC pricing. These CSP disclosures are the foundation and justification for the Contracting Officer's decisions and actions to ensure that initially awarded prices are fair and reasonable. To aid the Contracting Officer in their evaluation, FSS Schedule contract awards or modifications anticipated to be \$3 million or more a year in contract value are referred to the Office of Inspector General (OIG), Office of Contract Review (OCR) for pre-award reviews. OCR evaluates whether an offeror's CSP disclosures are accurate, complete, and current by evaluating transactional sales data and contracts with an offeror's commercial customers.

FSS contracts normally contain two important FSS provisions meant to provide price protection to the Government after award. First, Clause 552.238-75 Price Reductions, is designed to ensure that initially awarded prices remain fair and reasonable throughout the life of the contract. Under this clause, Multiple-Award Schedule (MAS) contractors and the Government agree to a customer (or category of customer) to serve as the basis for award, and this customer becomes the tracking customer for price reductions purposes. Price reductions are triggered if the Government's discount relationship to the tracking customer is disturbed during the life of the contract.

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<sup>2</sup> By extension, this FAR Clause also applies to the price determinations made by the Department of Veterans Affairs (VA), in regards the nine FSS Schedules it administers through delegation from GSA.

Second, FSS contracts also contain Clause 552-215-72 Price Adjustment--Failure to Provide Accurate Information. This clause allows the Government to reduce contract prices unilaterally if the Government determines that prices negotiated at the time of award (or at award of contract modifications to add items or increase prices) were increased by a significant amount because the contractor failed to submit information that was accurate, complete, or current.

OCR post-award reviews focus extensively on potential overcharges due to defective pricing or price reduction violations, in accordance with these two clauses.

### OCR Survey and Reviews of 621 I Contracts.

Prior to FY 2006, OCR had not performed any pre-award reviews of 621 I contracts. In the early years of the 621 I Program, the NAC estimated all 621 I proposals with a contract value of \$25,000 annually, below the \$3 million threshold requiring an OCR pre-award review. In November 2005, OCR requested a listing from the NAC of proposed review projects for FY 2006, and specifically requested that the listing include 621 I contracts. The listing provided by the NAC included seven 621 I contracts as post-award review candidates, and four 621 I contract extensions as pre-award review candidates.

To determine whether the proposed 621 I post-awards reviews should be initiated, we began examining the contract files. Our initial review of the contract files identified several concerns. First, we noted that several of the contracts were already several years old and our rights to conduct defective pricing reviews on the basic contracts and most modifications had expired under FSS Clause AS13 Examination of Records by VA. Also, it appeared that tracking customers had not been established on any of the contracts, which effectively eliminated our ability to examine compliance with the Price Reductions Clause. We also found that the CSP format and price analysis techniques being used by Contracting Officers to determine price reasonableness under the 621 I contracts were substantially different from what we had encountered on other FSS schedules.

As a result, we determined that OCR should conduct a survey of the 621 I Program prior to initiating any specific post-award reviews. The objectives of our survey were to take a comprehensive look at the NAC's policies and practices in implementing the 621 I Program and to determine how best OCR could contribute to the 621 I Program through the pre- and post-award reviews that other major FSS contracts require. To this end, we obtained statistical information from the NAC on all 621 I contracts awarded from 2001, when the 621 I Program went into effect, through the end of FY 2006. From this listing we identified the top nine contracts that accounted for over half of FSS 621 I sales through the end of FY 2006. We requested additional contract files from the NAC and reviewed all contract actions that required a CSP submission and a price reasonableness determination by the Contracting Officer. Our survey ultimately covered 46 contracting actions (the nine original awards, plus 37 modifications) on the nine sampled contracts from the 621 I Schedule's inception through the end of calendar year (CY) 2006. We also met with the GSA OIG to discuss their experiences in reviewing FSS service contracts

awarded and administered by GSA. We also examined GSA guidance relevant to acquiring services under FSS contracts.

From our survey, we determined that OCR's ability to effectively perform pre- and post-award reviews was significantly hampered by the policies and practices used by NAC Contracting Officers in awarding 621 I contracts. We found problems in a number of areas, including the pricing goal of NTE pricing, the CSP format, and the price analysis techniques being used by NAC Contracting Officers. We discussed our concerns with NAC officials in early CY 2007. The NAC officials defended the approaches they had taken under the 621 I Program and requested that we go forward with specific reviews on four contracts--two pre-award reviews of proposed contract extensions, and two post award reviews--in order to evaluate whether OCR reviews could be effective. We agreed to go forward with the reviews in order to obtain a better understanding of the healthcare service industry's commercial practices and to meet with Veterans Integrated Service Network (VISN) ordering activities about their use of 621 I contracts.

The NAC requested the four reviews in April 2007. Because one of the post-award reviews had to be delayed, we initiated a fifth post-award review of a 621 I contract in July 2007. In December 2007, the NAC also submitted a request for an additional post-award review of a 621 I contractor that was requesting an IFF refund, due to errors it made in its sales reporting. Ultimately, we completed these six reviews and issued our final reports.

## **Scope and Methodology**

This report is a compilation of the findings from our survey of nine 621 I contract files and our six pre- and post-award review reports of 621 I contracts. In all, we examined 11 621 I contracts that accounted for over 53 percent of historical 621 I sales through the end of FY 2008 (see Exhibit B). Among our specific work steps were:

- Reviewing FAR, GSA, and VA guidance regarding the FSS Program.
- Reviewing the original 621 I Solicitation RFP 797-FSS-00-0115 and subsequent revisions and modifications to identify key clauses and changes that affected the establishment of contract pricing.
- Discussing the 621 I Program and issues surrounding our sampled contracts with the NAC's FSS Assistant Director for Services and other NAC procurement officials.
- Meeting with GSA OIG staff to discuss GSA's approach in acquiring services under the FSS schedules handled by GSA, and the GSA OIG's experiences in conducting reviews of GSA service contracts.
- Interviewing contractor representatives to discuss their commercial sales practices in general.

- Performing various tests of contractor accounting and sales records data to determine if the CSP disclosures they provided the VA Contracting Officers were accurate, complete, and current.
- Reviewing billing records to determine if billings and IFF payments under their contracts have been accurate.
- Reviewing NAC procurement practices under other FSS Schedules.
- Discussing VA ordering activity practices in acquiring 621 I Services with procurement officials from VISNs 5, 15, and 17.
- Researching publically available information on the locum tenens healthcare industry.

As can be seen in Exhibit A, Table 2, nearly half (over \$920 million) of 621 I sales have historically been to other government agencies (OGAs) such as the Department of Defense. Although we reviewed some task orders issued to OGAs as part of our post-award reviews, we did not meet with any OGA ordering activities to discuss their procurement practices in issuing task orders under 621 I contracts. Thus, although we can establish that certain deficiencies, such as the use of all inclusive rates, are widespread among VA ordering activities, we cannot state whether OGA ordering activities are employing the same practices necessarily.

## **Results and Conclusions**

### **Issue 1: NAC Not Establishing Fair and Reasonable Pricing for 621 I Services**

We determined that the NAC's methods for awarding and pricing contracts under the 621 I Schedule were not adequate to establish fair and reasonable pricing and were not achieving a key objective of the FSS program--to achieve MFC pricing, or pricing to those customers purchasing under similar terms and conditions as the Government, by leveraging the FSS's volume buying power. The NAC has been negotiating and awarding national NTE contract rates for 621 I Services, even though national NTE rates are not a commercial practice and they do not correlate to a contractor's MFC pricing. The NAC has also been using a set of CSP disclosures under the 621 I Solicitation that are inadequate for determining price reasonableness. The NAC has also been using two methodologies for determining price reasonableness--comparison to other awarded FSS prices, and comparison to market survey information--that are inadequate for determining fair and reasonable prices for 621 I Services. These deficiencies deprive government ordering activities of one of the main benefits of the FSS Program--the ability to consider the FSS price as a fair and reasonable price when evaluating 621 I offers on government task orders.

#### **National NTE Pricing Not a Commercial Practice**

Similar to other FSS Schedules, the 621 I Schedule is intended to provide the best pricing possible to government users through the negotiation of pricing comparable to an FSS contractor's best commercial customers. This objective is clearly stated in the GSA Acquisition Manual (GSAM) Subpart 538.270 Evaluation of multiple award schedule (MAS) offers, paragraph (a): "The Government will seek to obtain the offeror's best price (the best price given to the most favored customer)." GSAM Subpart 538.270 further explains that Contracting Officers should evaluate whether the MFC is comparable to the Government for pricing purposes, by considering factors like the MFC's sales volume or the MFC's contract terms and conditions. If not, the Government can pursue pricing above the MFC price by matching to the best price offered to a customer purchasing under similar terms and conditions as the Government.

With few exceptions, the NAC's policy has been to establish national NTE rates for 621 I contracts. However, we found that national NTE rates were not a commercial practice for any of the contractors we examined. Thus, the MFC comparisons called for in GSAM Subpart 538.270 cannot be effectively pursued--there are no commercial customers establishing national NTE rates, so the Government cannot compare itself to an FSS contractor's commercial customers.

National NTE Rates Typical for Major 621 I Contracts.

In all the contracts we examined, the NAC negotiated a single NTE price for each specialty offered, with the NTE price applicable for the entire geographic area covered by the contract. For 9 of the 11 621 I contracts we examined, the geographic coverage was the entire United States (see Exhibit B). In the tenth contract the geographic coverage extended to 29 states, with the same rates for each specialty applying to all states. In the eleventh contract, the geographic coverage varied from 29 to 50 states depending on the SIN. As shown in Exhibit B, these 11 contracts represented 53 percent of all the 621 I sales that have taken place from the 621 Schedule's inception through the end of FY 2008.

We asked the FSS Assistant Director for Services why state-specific NTE rates were not being negotiated on national contracts. The Assistant Director stated that the NAC's negotiation of NTE rates is just the initial step of the procurement process for 621 I services—under FAR Subpart 8.4, the ordering activities must issue a RFQ and hold a competition between FSS contractors before issuing a task order. The Assistant Director also stated that ordering activities are in the best position to know what competitive market rates are in their area, based on their own historical experience, and the competition they hold would drive FSS contractors to offer lower prices than the NTE rates. She argued that it would be wasteful to have NAC Contracting Officers negotiate multiple NTE rates for different regions or states, when in fact the ordering activities will be conducting their own competition and negotiations.

We find that this position is at odds with FAR Subpart 8.4. The purpose of the RFQ is not to make a fair and reasonable price determination but to determine best value based on other factors in the SOW. Under the FAR, the purchasing entity has a right to rely on the FSS price as being fair and reasonable.

The 621 I Solicitation gives offerors the option of proposing nationwide and/or limited geographic area pricing. We asked contractor representatives why they did not propose multiple NTE rates. One official told us that the CSP information they must provide to support their national NTE rates was already considerable, and that coming up with NTE rates for each state would be overly cumbersome. Also, the actual price paid by the Government for their specialists is agreed to at the task order level, and the NTE rate is simply a ceiling target.

Based on our reviews, we believe 621 I contractors have little incentive to offer multiple state specific rates, given that: (1) multiple rates would require additional CSP disclosures; (2) multiple rates are not required; and (3) a single national NTE rate gives the contractors the greatest flexibility in setting task order pricing. Since many specialists provided are in travel status, the cost of living and/or the demand for their services locally would be more relevant to the rates they accept, rather than the NTE rate in another state where they might perform just a short term assignment.

National NTE Rates Not a Commercial Practice.

The non-commerciality of national NTE rates was clear in many of the contract files we reviewed, based on the contractors' disclosures and the Contracting Officers' memoranda to the file. For example, under Contract #3 (see Exhibit B), the following quote appeared in the Price Negotiation Memorandum (PNM) prepared by the FSS Assistant Director for Services (who was also the Contracting Officer for this contract):

There is a serious difference in terms from how [Contractor #3] does business with these private customers vs. the way they will be doing business with the Government under this schedule contract in that the price offered represent “not to exceed” nationwide rates vs. their commercial rate that represents ranges of rates that are subject to change at any time and are the lowest prices charged customers.

We found that this observation can be applied to all of the 621 I contracts we examined. Typically, 621 I offerors told the Government in their CSP disclosures that their commercial pricing was heavily dependent on the location, the experience level of the individual providing the services, and other local factors such as regional malpractice rates.

In our review of the contract files for Contract #9, we found that one contractor representative argued that the FSS NTE rate was in fact “meaningless.” In a modification proposal to add 17 specialties in 2003, the contractor’s representative and the contract specialist exchanged e-mails regarding the proposed national NTE rates. The representative said the following in one e-mail response:

I am working on the CSP/Pricing Worksheet, but it is really not going to be a true reflection of what we are doing. The “Offered Govt” column compared to the Best Customer Price column will make it look like our price under FSS is higher than our best customer price. This is not really the case, since the “NTE” rate is not necessarily the rate we will be charging. The NTE rate is really a meaningless figure, and the true price we are offering [at the task order level] is determined by numerous factors (e.g. geographic area, compensation requirements of the specific candidate, availability of candidates, etc.) and bid competitively for each individual effort.

National NTE Rates Not Reflective of GSA Guidance.

The FSS Program is worldwide in scope and FSS pricing for products are typically set at a fixed rate for all users nationwide or worldwide. GSA has recognized that services are fundamentally different than products and has specifically cautioned MAS Contracting Officers that national NTE rates for services should not be insisted upon, when such a practice runs contrary to commercial practice, which it clearly does.

In Section 6 of GSA's Acquisition Letter (AL) FC-01-5, "A Look at Pricing Services" (November 15, 2001), GSA discussed geographic location as a factor in evaluating proposed pricing:

Regardless of the pricing structure proposed (labor categories or unit prices), the MAS program is worldwide in scope. That does not mean, however, that we require a single price to be applicable worldwide. Many factors impact pricing—e.g., the area of country in which work is performed, labor availability, whether work is performed on a Government or contractor site. If an offeror identifies and proposes factors that impact pricing, such as the area of the country in which work is to be performed, whether work is performed on a Government or contractor site, etc., and can demonstrate that this is its commercial practice, **do not insist on one price applicable nationwide** [emphasis added]—doing so will lead to distortions because in areas where labor costs are low, the contract price will significantly exceed what is fair and reasonable, and in areas where labor costs are high, the contractor will not be able to find qualified workers to perform tasks.

Nevertheless, the current 621 I Solicitation requires contractors to propose NTE rates, and largely leaves the discretion of whether to offer national or state-specific NTE rates to the contractor. In addition, the 621 I Solicitation's CSP Exhibit 3 General Information for Submission of Pricing, stated: "Pricing submitted should be in accordance with standard commercial pricing practice (e.g., labor rates or fixed unit prices etc.). Only pricing approaches for which an offeror can provide supporting documentation demonstrating that it is in fact a commercial practice will be acceptable." This requirement is not achievable because the standard commercial practice is task order specific rates rather than statewide or national NTE rates.

### **National NTE Pricing Does Not Reflect MFC Pricing**

The NAC's practice of establishing national NTE prices is also contrary to the GSAM Subpart 538.270 objective of pursuing MFC pricing: "The Government will seek to obtain the offeror's best price (the best price given to the most favored customer)." First, the MFC concept itself cannot be applied to national NTE prices for services, because the pricing for services is task order specific rather than customer specific, and the lowest price paid for a given specialty is driven by market conditions. As a consequence, the NAC Contracting Officers cannot perform a meaningful comparison of the proposed FSS pricing to an offeror's commercial prices, because the factors that would normally serve as the basis of a comparison--commercial customer sales volume or contract terms/conditions--are irrelevant. Second, if the MFC concept is applied, then the contractors we examined were overwhelmingly not offering the FSS their MFC prices. Doing so would be against their business interests, because it would restrict them to just making offers on those task orders where they can offer their least expensive candidates. Finally, NAC Contracting Officers have at times equated the highest price billed by

contractors as the MFC price, and awarded FSS prices based on this comparison. We find this comparison to be contrary to the most basic understanding of the MFC under the FSS Program, which is the customer receiving the best price, not the worst price.

MFC Concept Cannot be Applied to National NTE Prices for Services.

Given that the contractors we examined had no commercial customers that agreed to national NTE pricing, applying the MFC concept itself to the 621 I Schedule becomes problematic. The MFC, as defined under the FSS program, is the commercial customer that receives the company's best price. Under VA's FSS schedules for products, such as pharmaceuticals, the MFC is typically a customer that receives the best price because it is making significant volume purchases or agrees to restrictive contract conditions (such as market share or sole source commitments to the contractor). Also, when OCR examines sales data under other FSS schedules, we typically find that the MFC has received its MFC price on thousands of transactions for millions of dollars in purchases. Thus, OCR and the Contracting Officer can make a reasoned judgment whether the FSS can pursue MFC pricing, because we can compare the Government sales volume to the MFC and evaluate the MFC's contract terms and conditions.

Under the 621 I Schedule, however, the MFC is simply the customer who got the lowest price within a narrow window of time. In the 621 I Solicitation CSP, offerors are asked to disclose the lowest price billed to any customer with an active agreement or within 30 days of the submission of the CSP (see Exhibit C, Page 2). The MFC price disclosed is typically for one specific specialist who served under one specific task order, not a price that occurred over hundreds or thousands of transactions.

In our pre-award review report on the contract extension for Contract #2, we reported how company officials stressed to us repeatedly that task order pricing was assignment specific rather than customer specific. Officials told us that the factors that are considered for each offered price include:

- the demand for the service in the marketplace at the time of the order;
- the availability of specialists at the time of order;
- the direct labor costs for the specialists, which can vary considerably based on their education and experience;
- the attractiveness of the job location to the specialist (a specialist may agree to a lower labor rate to take a travel assignment in a major city, for example, but a higher rate for a remote rural location); and
- the urgency and duration of the assignment.

The company officials told us that they did not really have MFCs, because pricing is simply driven by market conditions at the time of order.

621 I Contractors Not Offering MFC Prices.

We also found that, if the MFC concept is applied to the 621 I Schedule and the lowest price paid is considered the MFC price, then the Government, overwhelmingly, was not being offered MFC pricing. This was evident from the CSP disclosures provided by the contractors and the PNMs prepared by the NAC Contracting Officers prior to award on the contracts we examined. The PNMs describes how the Contracting Officer determined that the awarded prices were fair and reasonable. On several PNMs we examined in both our surveys and in our reviews, the Contractor Officer noted that the offered pricing was significantly higher than the MFC pricing, as shown in the table below:

<b>Contract</b>	<b>PNM Statement</b>
Contract # 11	The NTE rate offered the Government represented the highest priced location and the MFC CSP disclosures represented the lowest paid location. It was found that prices offered to the Government were 60% to 68% higher.
Contract # 7	Review and analysis of the Offeror's pricing practices revealed the proposed Government pricing ranges 69.6% - 97.6% higher than the Best Customer price. Similarly, analysis of the Overtime/On-call/Holiday rates revealed higher rates than the Best Customer rates. However, the NTE rate offered to the Government represents one of the highest priced locations while the Best Customer represents a lower paid location.
Contract # 9	...it was found that the price offered to the Government on a Not to Exceed (NTE) basis was: approx 13% - 93% higher than CSP for Doctors, Pharmacists and CRNAs; approx 13% - 151% higher than CSP for RNs and 265% higher than CSP for Dentists...the vendor provided a detailed explanation of the rationale and strategy used in the FSS NTE rates proposed. In summary: the offeror estimated the highest salary rate that could be paid and added malpractice insurance, G&A and profit.
Contract # 6	A price analysis was performed on the NTE rate vs. the MFC CSP disclosure. The NTE rate offered the Government represented the highest priced location and the MFC CSP disclosure representing the lowest paid location.

Contractor officials we spoke with in our pre-award reviews also told us that they were not offering MFC pricing to the Government. They stated the main rationale for offering FSS pricing near their highest rates was to have the flexibility to offer the widest variety of candidates they had available for Government task orders. If pricing were set at the lowest price for a specialty--which may reflect simply their least expensive specialist on a one-time procurement--then the contractor would frequently be unable to fill Government orders. Contractors would either have to operate at a loss by providing higher cost candidates at the FSS NTE rate, offer only low cost candidates who may not be competitively qualified, or make no offers at all.

### NAC Often Interpreting Highest Price as MFC Price of Comparison.

Because offered pricing was frequently well above the MFC price disclosed, we questioned how NAC Contracting Officers were able to make price reasonableness determinations that were consistent with the goals of the FSS Program. In some instances, the Contracting Officer made the price reasonableness determination by defining the MFC of comparison as the highest price the contractor billed, rather than the lowest. For example, the PNM for the original contract award of Contract #11 said:

A price analysis for the NTE rate vs. the MFC CSP rate for comparable locations (the highest paid) found the prices offered to the Government to be 2% lower than the prices offered their MFC for a comparable assignment at a comparable location. The discrepancy identified in best price analysis [the 60-68 percent discrepancy cited in the table above] is justified in that, the prices offered to the Government on a NTE basis are fair and reasonable when compared to the highest paid location pricing.

We disagree with the judgment that the highest price a contractor billed can represent an MFC of comparison for national NTE pricing (or NTE pricing covering any significant multi-state region). First, the highest price billed has the same shortcomings as the lowest price billed--namely, it is a task order specific price that is driven by the circumstances of the market, not by the customer's sales volume and contract terms and conditions. Second, the Contracting Officer cannot determine whether the highest price disclosed by the contractor is a significant outlier or whether it is a frequently billed price. If an outlier, any FSS price established based on comparison to it could significantly exceed what the offeror typically charges for the service. Finally, Government ordering activities across the country place orders against the 621 I contracts, under differing ordering situations--yet under FAR Subpart 8.4, all ordering activities are to consider the FSS price as a "fair and reasonable price", because it is assumed that the negotiated FSS price was based on MFC pricing. This cannot be the case if the FSS price is in fact the "worst case" pricing or the highest price a contractor bills.

### **CSP Format Flawed**

The CSP format being used under the 621 I Schedule is not achieving its intended purpose--to allow the Contracting Officer to determine the price reasonableness of offered pricing based on an offeror's commercial practices disclosures. Unlike the CSP formats for other FSS Schedules, the 621 I CSP does not ask offerors to disclose MFC discount terms and conditions. The CSP also does not request the offeror to disclose the net pricing and discount terms/conditions for all other customers receiving pricing lower than what is being offered the FSS. Instead, the CSP asks for other disclosures--the highest and lowest billed rates, the highest and lowest billed locations, and the most frequently billed rates--that do not provide useful information for evaluating the price reasonableness of a national NTE FSS price. The one other significant disclosure requested in the 621 I CSP--a "Pricing Validation" sheet that breaks out the offered price by cost element--is only a set of estimates and not a true disclosure of actual commercial

practices. Because national NTE pricing is not a commercial practice and is inconsistent with the purpose of the FSS program itself, we could not identify any revisions to the 621 I CSP format that would allow it to become a useful tool for evaluating price reasonableness.

#### Overview of CSP.

In the CSP under FSS Schedules for products, an offeror must disclose its MFCs and all customers receiving better discounts off of its commercial catalog pricing than what the Government is being offered. The offeror must also provide an explanation for the circumstances justifying the better discounts, such as volume purchases or sole source arrangements with the customer. To support the Contracting Officer's evaluation of the CSP, OCR conducts pre-award reviews to determine whether the CSP is accurate, complete, and current. Ideally, a comprehensive CSP disclosure would allow the Contracting Officer to determine whether the offered pricing was fair and reasonable without the need to obtain significant additional information.

When the 621 I Solicitation was first issued in February 2002, its CSP format was largely identical to the format used under other FSS Schedules. However, the original 621 I Solicitation also allowed offerors to submit pricing in one of two ways, depending on the offeror's standard commercial practices. First, if an offeror's pricing was based on a commercial catalog, the offeror needed to list the pricing offered in terms of the discount off of the commercial catalog list price and the net value. The offeror also needed to provide the standard CSP disclosures regarding its MFC pricing (following the format used on other FSS Schedules). The second way pricing could be submitted was if it was based on commercial, non-catalog pricing (that is, pricing was decided by market competition, rather than discounts off of a catalog price). If the offeror's pricing was market-based, the offeror needed to provide documentation to support that the price offered was a commercial price available in the marketplace. For offers that were market-based, the CSP format under the original 621 I Solicitation was largely irrelevant, because the CSP was geared around disclosures concerning the discount off of a commercial catalog price.

The NAC made a significant revision to the CSP format for 621 I Services in its December 2004 update to the 621 I Solicitation. The NAC eliminated the option to submit a traditional CSP based on commercial catalog pricing, and in its stead was a new CSP format with six tables (CSP Exhibit 3, Attachments 1a through 1f) geared toward market based pricing.<sup>3</sup> In the October 2007 revision to the 621 I Solicitation, these seven tables were consolidated into four (Attachments 1a through 1d), but otherwise contained all the same disclosures as required in the December 2004 CSP. Exhibit C of this report shows the CSP disclosure Attachments 1a through 1d required under the current 621 I Solicitation.

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<sup>3</sup> Prices based on commercial "Market Price" defined in FAR 2.101 as: current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

Flaws in Current CSP format.

We reviewed how the NAC was using the FSS contractors' CSP disclosures under all 11 contracts we examined, and we performed two pre-award reviews where we sought to verify the accuracy of the contractor's CSP disclosures for a proposed contract extension (Contracts #2 and #5). We found that the CSP format was flawed in that it requests information that would not be useful to the Contracting Officer in evaluating proposed national NTE prices. Thus, even if an offeror's CSP disclosures were entirely accurate, complete, and current, the Contractor Officer would be unable to use the CSP to determine if offered pricing was fair and reasonable.

The deficiencies in the CSP are found primarily in CSP Attachments 1b and 1d:

CSP Attachment 1b (Exhibit C, Page 2). This Attachment asks the offeror to make two key disclosures that require a "Yes" or "No" response:

1. Whether the offeror, based on its written policies and standard commercial practices, is proposing pricing to the Government that is equal to or better than the pricing it offers to any customer acquiring the same service, regardless of terms and conditions.
2. Whether the offeror had deviations from its written policies or standard commercial practices that ever resulted in better pricing than the best customer pricing it was disclosing in the CSP.

Both of these disclosures are required under other FSS Schedules. Attachment 1b also asks the offeror to disclose, for each SIN/specialty offered, its proposed FSS ceiling price; its lowest billed commercial price and location; its highest billed commercial price and location; and its most frequently billed price.

The disclosures under Attachment 1b have several shortcomings. First, as noted earlier in this report, the contractors we examined were offering pricing that was their highest or "worst case" pricing, not their lowest offered pricing. The NAC Contracting Officers were well aware that this was the case and acknowledged it in their PNMs prior to award. Thus, in response to the first disclosure question, an accurate response would be "No" for all contractors offering national NTE pricing. However, some contractors we examined said "Yes" to the first disclosure question and, but upon review we determined that the contractors typically meant that they offer the Government their best price at the time of order, not the offered FSS ceiling price that the CSP disclosure is intended to address.

Second, Attachment 1b's MFC disclosure--the lowest billed price and location--does not yield true MFC information. As discussed earlier in this report, the lowest billed price disclosed would typically be the price paid for a specific specialist on a specific task order within a narrow 30-day period, not an MFC price that applies across multiple transactions for significant sales dollars.

Attachment 1b also does not ask for the name of the customer that obtained the lowest billed price, nor any details regarding the terms and conditions that resulted in the lowest billed price. The CSP Exhibit 3 pricing instructions ask offerors to "Provide documentation to substantiate pricing (e.g., agreements with corporate customers, internal policies, market prices, quote sheets, pricing agreements and invoices, etc.) and identify the effective period, pricing and any other terms and conditions clearly." Our reviews found that such documentation was typically not provided with the contractor's CSP submissions, but was obtained if it was asked for by the Contracting Officer in order to substantiate pricing on certain SINs. Also, when provided, we found little evidence that the Contracting Officer was seeking to match to commercial customer terms and conditions.

Attachment 1b also does not ask for a listing of all customers that received pricing above the MFC price, but lower than the price offered the FSS. The Contracting Officer would therefore be unable to evaluate how well the commercial customers compare to the Government in any meaningful way, as the GSAM calls for, because no commercial customers are identified. Finally, as discussed earlier, the lowest price disclosed was not being used by the Contracting Officers in their determination of price reasonableness to any great degree on the contracts we examined. Thus, whether or not the offeror accurately disclosed the lowest price billed is largely irrelevant, because the Contracting Officer did not place significant reliance on the disclosure.

The third major disclosure under Attachment 1b--the highest billed price and location--suffers from the same shortcomings as the lowest billed disclosure. This disclosure reflects the price paid on a specific task order and it does not disclose any information (contract terms and conditions) about the customer behind the highest price paid. As discussed earlier in the report, NAC Contracting Officers have been using the highest price paid in analyzing the proposed FSS ceiling prices on some contracts, but we disagreed that the highest price paid can be considered the MFC of comparison.

Taken together, the highest price paid and the lowest price paid disclosures provide a commercial price range for a brief snapshot in time, but we find that such a range cannot be used to establish fair and reasonable prices or national NTE rates.

The final major disclosure under Attachment 1b is the most frequently billed commercial price for the specialties offered--in effect the mode or average price paid. The offeror is asked to provide an explanation of the methodology used to arrive at the most frequently billed price disclosed. In our pre-award review on Contract #2, we found that this disclosure was not a good indicator of the average pricing for services, because services pricing is task order specific and there may be multiple price points. As officials with Contract #2 told us:

Because we are looking at the provision of services rather than the sale of an object, each placement could conceivably have a different rate. In essence there is no 'Most Frequently Billed Rate.' We have therefore submitted the rates that represent the initial values that would be submitted in commercial contracts for each specialty if it were possible to give rates up front. The rates represent the market as of the time of our submission. These rates change constantly depending on provider compensation and market supply and demand forces.

CSP Attachment 1d Pricing Validation (Exhibit C, Page 5). Under the 621 I Solicitation CSP Exhibit 3 instructions, offerors are also instructed to breakout the cost elements of their proposed fully loaded labor rates, in line with the suggested Pricing Validation spreadsheet format in Attachment 1d. We examined the contractors' support for these price validation sheets in our pre-award reviews of proposed contract extensions for Contracts #2 and #5. In these two pre-award reviews, we were able to conclude that the pricing validation sheets were accurate and complete, because the validation sheets only require the offeror to provide estimates of the cost elements that went into the offered price. In our analysis, therefore, we were only able to examine whether the contractor had a reasonable approach in preparing the estimates.

We find that the pricing validation sheets also fail to serve as an adequate basis for establishing the price reasonableness of national NTE rates:

- The disclosed validation sheet estimates do not reflect an actual CSP disclosure, because the estimates are not tied to any specific commercial customer or to a specific market price that is actually being billed. It is not a CSP disclosure if it is just a collection of estimates used to break out a proposed national NTE rate, which itself is not reflective of any actual commercial practice.
- The pricing validation sheets do not constitute an agreement between the Government and the contractors in that the internal cost components of their proposed FSS rates will always break out in the same percentages as was disclosed. Thus, if OCR conducts a post-award review and finds that a contractor billed the appropriate FSS rate, but the internal cost components did not match to the CSP pricing validation sheet disclosures (such as if profit was 25 percent, whereas the validation sheet had disclosed 8 percent), there is no action that the Government could take. The only price binding on the contractor is the negotiated FSS fully loaded labor rate. CSP disclosures under other FSS Schedules are designed to report actual pricing not hypothetical pricing.

In summary, because the 621 I Contractors do not have commercial customers that agree to national NTE rates, we cannot envision any CSP disclosure that would permit the Contracting Officer to establish fair and reasonable national NTE prices based on the three price points asked for under Attachment 1d (highest price, lowest price, and average price).

## **NAC Methods for Determining Price Reasonableness Flawed**

To determine fair and reasonable NTE prices for services, NAC Contracting Officers have been primarily using two price analysis methodologies--price comparison to other FSS contracts, and comparison of offered direct labor rates to salary survey information.

We found that these methodologies do not provide an adequate basis for establishing price reasonableness. We also found that there are no price analysis methodologies that could be used to establish the price reasonableness of national NTE prices, again because national NTE pricing is not a commercial practice.

### Background on NAC's Price Analysis Methods.

When the 621 I Schedule was first issued in 2001, the NAC Contracting Officers largely used the CSP information provided by the offerors for price analysis. Three of our sampled contracts were awarded effective August 31, 2001. The Contracting Officer on each contract sought to utilize the contractor's CSP disclosures as a basis for price reasonableness and requested supporting documentation to evaluate their disclosures. While we believe the Contracting Officer made a serious effort to evaluate price reasonableness with the information available, the Contracting Officers acknowledged in their memoranda to file that there was a significant difference between the NTE pricing offered under the FSS and the lowest price available offered by the contractors in their commercial markets. Thus, the fundamental shortcoming with national NTE rates—that they do not represent a commercial practice--was recognized early on in the program.

After November 2001, we saw a marked change in the price analysis methods used by NAC Contracting Officers. Many Contracting Officer's Pre-Negotiation Memorandums and PNMs, for both original awards and contract modifications, began citing GSA's FSS AL FC-01-5, "A Look at Pricing Services", which was issued November 15, 2001.<sup>4</sup> AL FC-01-5 recommended analysis of an offeror's CSP disclosures and commercial sales data to evaluate pricing, as is done for commercial items. However, AL FC-01-5 also proposed that Contracting Officer compare offered prices against MAS contractors for the same schedule or service. AL FC-01-5 also recommended comparing offered pricing to published market indicators. However, AL FC-01-5 reiterated GSAM Subpart 538.270 guidance that the pricing goal for services should be on MFC pricing: "Seek to obtain the offeror's best price, discounts, concessions, terms and conditions—The price given to the most favored customer under similar selling terms and conditions."

On many of the pre-negotiation memorandums we reviewed in the contract files, the Contracting Officer would typically state, "In accordance with FSS Acquisition letter FC-01-5 dated November 15, 2001, a comparison of the prices offered to the Government to those prices already awarded to MAS contractors for the same schedule or service was made." The Contracting Officer would then compare the offered prices for each specialty to the prices the NAC had awarded to other contractors previously under the 621 I

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<sup>4</sup> AL FC-01-5 was updated in November 2002, but it expired in November 2003 and has not been renewed. However, it remains the most recent GSA guidance issued pertaining to the pricing of FSS services.

Program. In addition, after the Pricing Validation disclosure became a part of the CSP (Exhibit C, Page 5) Contracting Officers began making comparisons of the "direct labor" portion of the validation disclosure to market survey information, such as the website [Salary.com](http://Salary.com).

Contracting Officers continued to make reference to the offerors' CSPs in their pre-negotiation memorandums and PNMs after AL FC-01-5 was issued. The most common use of the CSP was to compare the offered NTE pricing to the offerors disclosed highest billed rates, as previously noted. We asked the FSS Assistant Director how much reliance NAC Contracting Officers were placing on the offerors' CSP information in making their price reasonableness determinations, and she guessed it was about "a third."

#### Price Comparison to Existing FSS Pricing for the Same Services.

Comparison to already existing FSS contract prices has several weaknesses as a pricing methodology. First, at the time AL FC-01-5 came out in November 2001, there were only five active 621 I contracts. Using such a small pool of contracts for price comparison would be questionable, even if the prices under those contracts were deemed fair and reasonable in an adequate manner. However, we reviewed three of these contracts, and found that price reasonableness was not adequately established under these initial contracts. Our review noted inadequacies in the CSP data submitted and shortcomings in the methodologies used to evaluate that data. We found that these efforts resulted in inadequate fair and reasonable pricing determinations, because they were not made in comparison to commercial customers purchasing under similar terms and conditions as the Government.

In addition, if the NAC believed that the methodologies it employed in these initial 621 I contracts were adequate, there would have been no need to move away from those methodologies to embrace the alternative approaches suggested by AL FC-01-5. The fact that the NAC did switch methodologies was a tacit admission that the original price analysis approaches were insufficient. AL FC-01-5 provides that comparisons to previously awarded Government prices is acceptable "...**IF** both the validity of the comparison and the reasonableness of the previous price can be established." We find that looking backwards at these initial 621 I contract awards does not satisfy this criteria.

In our pre-award review of Contract #2, we also discussed the problems that would ensue if FSS price comparisons were used in its case. First, we noted that the price spreads on the 621 I Schedule (that is, the lowest price for a given specialty from any FSS contractor, to the highest price from any FSS contractor) were so broad that we could see no legitimate way of drawing relevant conclusions from them. For example, for the SIN 621-022 Urologist/Surgery specialty, the low price at the time of our report (March 2008) was an hourly rate of \$126.90 for one contractor to a high price of \$259.15 for another contractor. These same large price spreads exist across multiple specialties on the 621 I Schedule today. Simply examining existing FSS pricing does not take into consideration the age of the prices, whether the contractors have had recent sales at those contract prices, or how fast the market is changing.

Second, our review of Contract #2 found that comparison to existing FSS prices would not be a valid means for the Contracting Officer to determine price reasonableness for at least 13 of our 34 sampled specialties. At the time of our review, Contract #2 already had the highest FSS price for four specialties. For these specialties, a price comparison to the FSS schedule would simply reveal that the contractor was asking for a price increase above its existing pricing—not whether there was a legitimate basis for granting the increase. For nine additional specialties, the contractor's requested price increases would give the contractor the highest FSS price on the 621 I Schedule. If there was a legitimate basis for the contractor's proposed price increases, that basis should be evaluated independent of whether or not it increased the price ranges on the 621 I Schedule overall.

In our survey of 621 I contract files, we also saw examples in some contract modifications where comparisons to existing FSS pricing was made, the offered pricing was above the existing highest FSS price for a given specialty, and the Contracting Officer awarded the offered pricing. The rationale for making the award was that the offered pricing was not significantly higher than the existing highest FSS price, or that market survey information supported the price. However, the net effect was that a new "highest" FSS price for that specialty was now on schedule, and consequently subsequent comparisons to awarded FSS prices on subsequent offers would allow for a higher price threshold. In this way, pricing on the 621 I Schedule has continually trended upwards, as more and more contracts have their price reasonableness based on the contracts awarded previously.

Finally, when Contracting Officers use comparisons to existing FSS prices as a price analysis methodology, they are making a price determination on information that was not provided by the offeror. This method raises the question as to why CSP disclosures are being requested, if price reasonableness is going to rest on information not provided by the offerors.

#### Price Comparison to Market Survey Information.

The second price comparison technique used by NAC Contracting Officers after the issuance of AL FC-01-5 was comparisons to market survey information. Typically, the Contracting Officer would take the estimated “direct labor” portion of the proposed FSS prices and compare them to a national labor survey such as on [Salary.com](http://Salary.com). We found that this was not an effective means for establishing price reasonableness for several reasons:

- The “direct labor” portion of the Pricing Validation sheets is simply an estimate, not the actual offered price for direct labor. Because it is an estimate, this direct labor portion does not genuinely reflect a CSP disclosure—it is simply a portion of the offered price. Therefore, it is unlikely that any future OCR post-award review would be able to identify defective pricing damages because of a poorly estimated direct labor figure.
- We did not find a consistent approach being used by the NAC in conducting this type of comparison. Typically, the NAC Contracting Officer used the [Salary.com](http://Salary.com) information to calculate a base hourly rate for the upper percentile salary range (such

as 75 percent). This percentile range was then compared to the estimated direct labor portion from the Attachment 1d Pricing Validation sheets. We found examples where the Contracting Officer attempted to negotiate a lower price and examples where the Contracting Officer accepted a price higher than the market survey but considered the price within a reasonable (but undefined) range of the market survey rate. Based on our review, there did not appear to be any strong consistency into how these market survey comparisons were utilized.

- A market survey comparison for direct labor only ignores a substantial part of the offered FSS price (that is, non labor costs, such as fringe benefits, overhead and G&A, payroll taxes, insurance, and profit).
- Published market surveys such as [Salary.com](http://Salary.com) are typically for salaried healthcare staff in permanent positions, not locum tenens staff. Contractor officials with Contract #2 told us that some costs elements, such as fringe benefits, could be substantially different for doctors working locum tenens to doctors who work in salaried, permanent positions. Market surveys therefore may not be good indicators of salary levels in the locum tenens marketplace.

Finally, as with comparison to other FSS prices, basing price reasonableness determinations on market surveys means that the Contracting Officer is not basing price reasonableness on information provided by the offeror (other than the estimate for direct labor). Again, OCR would be unable to pursue defective pricing damages on any subsequent 621 I post-award reviews if the Contracting Officer was relying on market survey data, rather than the contractor's disclosures, in making his/her price reasonableness determination.

The NAC's methodologies for determining price reasonableness under the initial 621 I contract awards in 2001 were inadequate, so the NAC was correct to seek alternative approaches. However, the two primary methodologies it embraced after November 2001 did not resolve the central problems with the 621 I Schedule--national NTE pricing is not a commercial practice, and 621 I contractors base their best pricing on task order specific factors rather than customer specific factors. Given these problems, we could not identify any alternative method that would allow the NAC to continue to award national NTE pricing in a manner consistent with the FSS Program.

### **Ordering Activities Deprived of Key Benefit of FSS Program**

The deficiencies noted above deprive Government ordering activities of one of the main benefits of the FSS Program--the ability to consider the FSS price as a fair and reasonable price when evaluating offers for 621 I task orders, as called for under FAR 8.4. Based on our reviews of 621 I contracts, we found that ordering activities frequently pay for 621 I services at or near the FSS contract rates. Accordingly, ordering activities may be paying more for healthcare services than necessary, because the national NTE rates overwhelmingly reflect the most expensive rates offered by 621 I contractors.

Earlier in this report, we noted that FSS Assistant Director for Services said that the FSS price was only the initial step in the procurement of 621 I Services. Under FAR 8.4, ordering activities must issue RFQs and have 621 I contractors compete to offer their services. This competition, along with the historical experience of ordering activity Contracting Officers of local market surveys and competitive rates, would drive 621 I contractors to offer pricing below their NTE rates. However, we find that the assumption that ordering activities are consistently negotiating FSS NTE rates downward is unwarranted. Several factors lead us to this conclusion:

- Both the contractors we spoke with and ordering activity officials said that the 621 I offers are frequently at or near the FSS ceiling rates. Contractor officials told us that this was because the costs for many healthcare specialties rise quickly, and the FSS contract pricing rapidly becomes outdated. They also said that process for getting economic price adjustments approved for their FSS contracts was too slow and cumbersome.
- For FSS task orders, ordering activities may limit their “market research” to the FSS itself. Querying Government databases of contracts and other procurement instruments intended for use by multiple agencies is an acceptable method of market research under the FAR (FAR Subpart 10.002(2)(iv)). Querying the FSS 621 I database would not aid ordering activity Contracting Officers in finding fair and reasonable pricing, because we found that fair and reasonable pricing was not being adequately established on 621 I contracts.
- Many 621 I task orders we examined showed that contractors responding to RFQs frequently proposed candidates residing in other states. For example, in response to a RFQ for a 621-007 Cardiologist for the VA Medical Center in Martinsburg, West Virginia, all the proposed candidates were from out of state -- Texas, California, Arizona, Pennsylvania, and Indiana. In evaluating offers in such situations, the ordering activity Contracting Officer would achieve little by knowing the local market survey rates for cardiologists in the Martinsburg, West Virginia area.

Rather than expect ordering activities to negotiate expensive national NTE FSS rates down to local market rates, the NAC should correct its process for pricing and awarding 621 I contracts. The NAC should eliminate national NTE rates as a pricing goal of the program, correct the deficiencies in its CSP disclosures for services, and utilize price analysis methodologies that allow NAC Contracting Officers to determine fair and reasonable prices for 621 I services. Until these corrective actions take place, the NAC needs to issue specific policy and guidance to 621 I purchasers indicating that the prices may not be fair and reasonable for the services being procured at their locations.

## **Issue 2: Ordering Activities Not Ensuring Best Value Pricing**

The shortcomings identified in the preceding sections all pertained to the establishment of a fair and reasonable price at the FSS level. However, under FAR Subpart 8.4, ordering activity Contracting Officers are also charged with making a best value determination prior to issuing task orders against 621 I contracts. In our post-award reviews, we found that VA ordering activities were not taking adequate steps to make adequate best value determinations, because of their widespread use of all inclusive rates.

### **Ordering Activity Responsibilities in Procuring Healthcare Services**

Once a VA ordering activity determines that it must acquire healthcare services via a competitive procurement process, the FAR and VA procurement guidance governs the approach that must be taken. In accordance with this guidance, VA ordering activities must first seek to obtain services via the FSS Schedule, before considering open market competition. Under FAR Subpart 8.4, ordering activities placing orders under FSS contracts, or establishing Blanket Purchasing Agreements (BPAs) under FSS contracts, are not to seek competition outside of the FSS Schedules or synopsize the requirement. Instead, under FAR Subpart 8.405-2 Ordering procedures for services requiring a statement of work (which 621 I task orders would normally require), ordering activities must solicit quotes from at least three FSS schedule contractors. Ordering activities would then select the offer that represents the best value to the Government, considering price, the quality of the candidate, and other factors. FAR Subpart 8.4 also encourages ordering activity Contracting Officers to seek price reductions below the FSS price, if the order exceeds the FSS contracts maximum order threshold, if a BPA is being established, or if there are other reasons to request a price reduction.

The FSS price excludes travel expenses, but these can be agreed to at the ordering activity level. Under the 621 I Solicitation's CSP Exhibit 3 instructions, contractors are advised that costs for transportation and lodging required for on-site services at an activity must be in accordance with the regulatory implementation of Public Law 99-234, FAR 31.205-46, Travel Costs and the Contractor's cost accounting system/Federal Government Travel Regulations. The Federal Travel Regulation (FTR) requires that contractors not be compensated for lodging/per diem expenses at a rate greater than what Government employees would be entitled to be reimbursed. Contractors are also supposed to notify the ordering activity, in writing, of the proposed request for reimbursement of transportation and/or lodging expenses, at the time they are responding to a task order request. The Contractor shall only be reimbursed for these travel and per diem expenses as outlined on the executed task order.

## **Ordering Activities Using All Inclusive Rates Extensively**

In our three post-award 621 I contract reviews (Contracts #3, #7, and #9), we identified several contract-specific issues regarding billing errors and IFF payments that were reported to the NAC Contracting Officers in our reports. Our reviews revealed one systemic problem occurring at the ordering activity level that affected nearly all 621 I task orders we reviewed. We found that VA ordering activities were issuing RFQs and agreeing to task orders that included all inclusive rates. Such rates combine the proposed hourly loaded labor rate (which should be at or below the FSS ceiling price) with proposed travel expenses prorated at an hourly rate. For example, an RFQ for cardiology services at VISN 5 that we examined said that the hourly rate should be proposed as follows:

Cardiologist Services, All inclusive, to include cost of boarding/room, meals, airfare/travel expenses, car rental, etc.

A contractor official for Contract #3 told us that VA ordering facilities require offerors to bid all inclusive rates, and we heard the same from officials of other 621 I contractors. Also, many of the task orders we examined in our pre- and post-award reviews were at all inclusive rates and did not break out labor and travel expenses into separate line items.

An all inclusive rate includes two components--labor and travel--whereas the FSS price covers only labor. Thus, the FSS fair and reasonable determination only applies to the labor portion of the all inclusive rate under 621 I Services contracts. Because ordering activity Contracting Officers do not know what portion of the all inclusive rates are for labor, and what portion for travel, it is impossible for them to judge whether the overall offered price is fair and reasonable.

In two of our three post award reviews (Contracts #3 and #7) we found that the Government was incurring overbillings on both labor and travel expenses because of the ordering activity use of all inclusive rates. On Contract #3, we sampled sales data for four specialties with combined sales of over \$12.8 million for a 1-year period. Of this amount, 70.11 percent (\$9,036,918) were for orders where the inclusive rates exceeded the FSS NTE rates. Of the 64 task orders reviewed, we identified 13 orders where a total of \$36,515 in overbillings occurred on labor, due to the use of all inclusive rates. We also performed a detailed review of the travel expenses actually incurred on one task order, and found that the Government was billed for travel costs that were never incurred (such as air travel for someone who actually drove to the VA Medical Center) and for travel costs that were in excess of what was allowable. Out of the \$30,310 that was paid to the contractor for travel expenses under this one task order, \$8,750 (28.9 percent) was for travel expenses that were never incurred or were unallowable.

In our post-award review of Contract #7, we found that 4 of 10 task orders in our sample included all inclusive rates. In all four cases, the all inclusive rates were higher than the FSS NTE rates and the Contracting Officers did not obtain a detailed breakdown of the rate between what represented the labor portion and what represented the travel portion

of the rate. There is no documentation to show that any attempt was made to ensure that the labor portion of the rate did not exceed the FSS NTE rate at the time of award. In most cases the Contracting Officer simply assumed the FSS NTE rate was the labor portion and anything proposed over that was the travel portion.

During our site visit to VISN 15 in Leavenworth, Kansas, we did find that the Contracting Officers were asking contractors to submit quotes that identified the proposed travel portion of their all inclusive rates. The VISN 15 Contracting Officers would then compare the proposed travel portion and to the allowable lodging/per diem rates under the FTR. The VISN 15 officials had some success in negotiating rates downward when contractors proposed excessive travel costs. In some instances, the proposed candidate was local, so no travel expenses should have been incurred. The VISN 15 Contracting Officers also used this methodology to alert contractors that their offers exceeded their FSS NTE prices. However, the VISN 15 officials complained that many contractors told them that they were the only ordering activity asking for these breakouts, and were the only ones insisting on the FSS ceiling rates. Also, a VISN 15 official showed us one example where a contractor withdrew a quote, after it was determined that their all inclusive rate included labor costs far in excess of the contractor's FSS ceiling rate. Because VISN 15 Contracting Officers were seeking to fill needed staff shortages in the healthcare facilities they support, they felt disadvantaged relative to other VISNs, because proposed contractor pricing is being scrutinized less closely by the other VISNs.

As with national NTE pricing, the use of all inclusive rates also appears to be a Government-specific phenomenon. Officials from both Contracts #2 and #3 told us that they bill travel costs to their commercial customers separately, with the cost of travel simply being a pass-through expense. Only FSS ordering activities ask that they combine travel costs with labor costs into one all inclusive rate.

Ordering activities should issue RFQs for 621 I services that ask offerors to submit quotes with separate line items for: (1) the loaded hourly labor rate with IFF proposed; and (2) any travel costs required. The ordering activity Contracting Officers should use the loaded labor rate with IFF to confirm whether the offered rate is below the offeror's FSS NTE rate. The proposed travel costs should also be clearly identified, so that the Contracting Officer can determine whether they are in line with the FTR and other FSS contract requirements. Any resultant task order should also show labor and travel costs as separate line items and should pay travel costs on a cost reimbursable basis.

### **Issue 3: Shortcomings Prevent Effective OCR Reviews**

A primary mission of OCR is to perform pre- and post-award reviews of FSS contracts and contract modifications. For pre-award reviews, our responsibility is to assist the NAC Contracting Officer in their determination of price reasonableness by determining if the offeror's CSP information is accurate, complete, and current. We also recommend proposed pricing based on our analysis of an offeror's CSP disclosures, and we examine the appropriateness of proposed tracking customers for purposes of the Price Reductions Clause. For post-award reviews, we examine if awarded contracts were defectively priced due to the contractors' submission of CSP information that was not accurate, complete, or current at the time of award; if price reductions are due the Government under the terms of the Price Reductions Clause; if Federal agencies placing orders against the contract are receiving the correct prices/discounts; and whether IFF was accurately remitted.

The significant shortcomings with the 621 I Program discussed in this report undermine the utility of OCR pre-award reviews. Because national NTE pricing is not a commercial practice, OCR pre-awards would be unable to do any reviews of commercial customers purchasing under similar terms and conditions as the Government, because there are no such customers. Also, because the 621 I CSP format does not require information that, in our judgment, would aid in determining fair and reasonable pricing, verifying the CSP's accuracy and completeness would serve no useful purpose. These shortcomings not only prevent OCR from performing an effective pre-award review, they also prevent the Contracting Officer from determining price reasonableness based on price analysis techniques, as called for under FAR 15.404-1(b).

Another shortcoming hindering effective OCR pre-award reviews is that the 621 I Solicitation lacks an effective Price Reductions Clause. Under Clause 552.238-75 Price Reductions, the Government and the FSS contractor agree to a customer (or category of customer) to serve as a tracking customer. The Government and the FSS contractor also agree to a pricing ratio that must be maintained between the FSS price and the tracking customer's price during the life of the contract. If the tracking customer gets a price discount that disturbs this ratio, the Government must be granted a price reduction as well. In our FSS pre-awards, we routinely evaluate which customers would be good candidates to serve as tracking customers.

We found that no tracking customers have ever been established on 621 I contracts. Prior to December 2004, the Price Reductions Clause was rendered inapplicable by other language in the 621 I Solicitation, because 621 I offerors were basing their offered prices on market prices rather than commercial catalog prices. NAC Contracting Officers did not have to negotiate tracking customers on offers that were based on market pricing. In later versions of the 621 I Solicitation, the contract language that rendered the Price Reductions Clause inapplicable was in fact removed, but NAC Contracting Officers still did not negotiate any tracking customers. We asked the NAC's Assistant Director for FSS Services why this was the case, and she explained that the Price Reductions Clause was basically not usable for the 621 I Schedule.

These same shortcomings also mean OCR cannot do effective post-award reviews in the two main areas we examine --defective pricing and Price Reductions Clause violations. We can do little to examine 621 I contracts for defective pricing, because the NAC Contracting Officers are relying on information that was not provided by the offeror in determining price reasonableness. Thus, we would be unable to conclude that contract pricing was increased significantly due to inadequate CSP information from the 621 I contractors. Also, OCR cannot test for violations of the Price Reductions Clause if no tracking customers are established, which is the case with all 621 I contracts.

OCR can continue to do post-award reviews of 621 I contracts to determine if Government agencies have been receiving the correct FSS pricing and whether the correct amount of IFF has been paid on 621 I contract sales.

The inability of OCR to do effective pre- and post-award reviews of 621 I contracts means that the Government is at greater risk of overpaying for healthcare services. If the 621 I Program is to continue, it should be revised in such a way that OCR can perform the same pre- and post-award services it performs under other FSS Schedules for VA. Until such time, OCR sees no benefit in performing pre-award reviews on any 621 I contracts, and can only perform post-award reviews for billing or IFF errors.

## Conclusions

NAC Contracting Officers cannot adequately establish the price reasonableness of national NTE prices for 621 I Services, which is the predominant pricing approach taken on 621 I contracts. We therefore recommend that the Deputy Assistant Secretary for the Office of Acquisition and Logistics (OAL) direct the NAC to cease from issuing any 621 I contracts unless the Contracting Officer can determine that the offered prices are fair and reasonable. The Deputy Assistant Secretary should also direct the NAC to eliminate national NTE pricing as a pricing objective, and to revise its 621 I CSP format and price analysis methodologies to better meet the objectives of the FSS Program. The Deputy Assistant Secretary should also direct the NAC to inform all FSS customers that they should not rely on current 621 I NTE prices in making best value determinations, until such time as these recommendations are implemented. Instead, FSS customers should be advised to make best value determinations based on either: (a) adequate price competition among FSS contractors, or (b) open market competition, if adequate competition among FSS contractors cannot be achieved.

The lack of adequate price reasonableness determinations at the FSS level for healthcare services increases the risk that ordering activities are paying more for healthcare services than necessary. This is because ordering activities frequently agree to healthcare services task orders with pricing at or near the FSS NTE price. Because the FSS national NTE rates are near the highest rates that 621 I contractors offer, ordering activities may be paying for lower cost candidates at an unjustifiably higher rate.

We recognize that eliminating national NTE pricing and revising the NAC's entire pricing approach on the 621 I Program will significantly alter its nature and scope. OCR also recognizes that the unique nature of the healthcare services marketplace will make developing alternative CSP disclosure formats and price analysis approaches difficult. OCR is prepared to work with the NAC to see if such revisions are possible, which would then allow OCR to contribute to the 621 I Program via its pre- and post-award review processes. If no viable solutions exists that would allow the establishment of national FSS contracts for healthcare services consistent with the goals of the FSS Program, we believe that the 621 I Schedule may ultimately need to be eliminated from the FSS Program.

This report also recommends that VA's Deputy Assistant Secretary for OAL direct VA ordering activities to cease from issuing RFQs and task orders under 621 I Schedule contracts with all inclusive rates.

## **Recommendations**

We recommend that the Deputy Assistant Secretary for OAL direct the NAC to:

1. not award any 621 I contracts unless the Contracting Officer can determine that the prices offered are fair and reasonable;
2. eliminate national NTE pricing as a pricing objective, and to establish pricing objectives under 621 I contracts that are consistent with the goals of the FSS Program (MFC pricing, or the best pricing to commercial customers purchasing under similar terms and conditions as the Government);
3. revise the 621 I Solicitation's CSP format to require disclosure of information relevant to Recommendation 2;
4. use price analysis methodologies that place significant reliance on the 621 I CSP disclosures, once revised;
5. cease using comparisons to existing FSS prices and/or national market surveys as methodologies for establishing price reasonableness; and
6. inform all FSS customers that they should not rely on current 621 I NTE prices in making best value determinations, until such time as the above recommendations are implemented. Instead, FSS customers should be advised to make best value determinations based on either: (a) adequate price competition among FSS contractors, or (b) open market competition, if adequate competition among FSS contractors cannot be achieved.

We also recommend that the Deputy Assistant Secretary for OAL direct VA ordering activities to:

7. cease issuing task orders under 621 I Schedule contracts with all inclusive rates.

FSS 621 I Schedule Sales History

**Table 1: Schedule 621 I Sales By SIN for FY 2008**

Count	SIN	Description	Number of FSS Contracts with SIN	FY 2008 VA Sales	FY 2008 Other Government Agency (OGA) Sales	FY 2008 State and Local Government (SLG) Sales	Total FY 2008 Sales
1	621-001	Physician -- General & Family	50	\$ 5,347,811	\$ 14,948,534	\$ -	\$ 20,296,345
2	621-002	Physician -- Emergency Medicine	30	9,263,103	15,425,929	-	24,689,032
3	621-003	Physician -- Internal Medicine	43	25,754,414	8,415,106	-	34,169,521
4	621-004	Physician -- Pediatrician	31	586,650	4,795,925	-	5,382,574
5	621-005	Physician -- Obstetrician/Gynecologist (OB/GYN)	20	440,886	3,698,652	-	4,139,538
6	621-006	Physician -- Anesthesiologist	33	13,932,937	4,538,070	-	18,471,006
7	621-007	Physician -- Cardiology	21	5,495,783	449,826	-	5,945,609
8	621-008	Physician -- Dermatologist	16	838,285	292,040	-	1,130,325
9	621-009	Physician -- Hematologist	14	600,182	705,284	-	1,305,466
10	621-010	Physician -- Neurologist	19	1,462,195	113,012	-	1,575,208
11	621-011	Physician -- Ophthalmologist	12	458,561	320,081	-	778,642
12	621-012	Physician -- Optometrist	15	173,595	1,001,335	-	1,174,929
13	621-013	Physician -- Orthopaedic	19	2,476,867	973,869	-	3,450,736
14	621-014	Physician -- Physical Medicine & Rehabilitation	17	1,553,979	-	-	1,553,979
15	621-015	Physician -- Otolaryngologist (Ear/Nose/Throat--ENT)	15	385,988	394,944	-	780,931
16	621-016	Physician -- Pathology	13	331,875	11,488	-	343,363
17	621-017	Physician -- Psychiatrist	34	10,544,545	4,192,986	-	14,737,532
18	621-018	Physician -- Psychologist	23	336,692	2,504,595	-	2,841,287
19	621-019	Physician -- Podiatrist	7	25,798	194,398	-	220,196
20	621-020	Physician -- Radiology	36	21,628,065	10,349,166	-	31,977,231
21	621-021	Physician -- Surgery (Not elsewhere classified)	23	3,377,952	2,207,317	-	5,585,268
22	621-022	Physician -- Urology	17	3,753,600	337,142	-	4,090,742
23	621-023	Physician -- Nuclear Medicine	7	-	-	-	-
24	621-024	Physician -- Gerontologist	10	-	-	-	-
25	621-025	Registered Nurses	209	77,075,296	49,307,187	-	126,382,483
26	621-026	Dentist	23	136,530	518,093	-	654,622
27	621-027	Pharmacist	70	12,665,084	12,006,126	-	24,671,210
28	621-030	Physician Assistants	60	2,624,353	8,908,303	-	11,532,655
29	621-031	Audiologist/Speech & Language Pathologist	46	675,722	19,408	-	695,130
30	621-032	Emergency Response Professions	25	255,719	523,148	-	778,867
31	621-033	Dental Related Services	39	752,897	1,138,812	-	1,891,709
32	621-034	Respiratory Therapy	92	4,994,927	1,478,474	-	6,473,400
33	621-035	Physical Therapy/Recreational Therapy	93	8,912,426	2,227,614	-	11,140,039
34	621-036	Perfusionist/Perfusion Technologist	3	375,315	-	-	375,315
35	621-037	Occupational Therapy	75	1,358,908	341,518	-	1,700,426
36	621-038	Licensed Practical/Vocational Nurse	177	16,275,887	9,550,697	25,830	25,852,414
37	621-039	Medical Assistant/Medical Administrative	102	4,953,235	8,428,385	-	13,381,620
38	621-040	Nurse Assistant	135	21,545,767	5,905,502	-	27,451,269
39	621-041	Cytotechnologist	19	236,736	95,703	-	332,439
40	621-042	Kinesiotherapist	2	-	-	-	-
41	621-043	Orthotist/Prosthetist	2	2,363,471	-	-	2,363,471
42	621-044	Ophthalmic Services	11	289,591	1,186,073	-	1,475,664
43	621-045	Genetic Counselor	4	233,556	68,188	-	301,744
44	621-046	Clinical Laboratory Science/Medical Technology	83	6,481,195	6,254,548	23,552	12,759,295
45	621-047	Counseling Related Services	44	4,126,257	3,200,820	-	7,327,077
46	621-048	Dietitian/Nutritionist	17	-	451,321	-	451,321
47	621-049	Surgical Technologist	78	2,240,336	712,125	-	2,952,461
48	621-050	Radiologic Technology	109	19,307,603	4,690,008	-	23,997,612
49	621-051	Pharmacy Technician	59	11,013,362	3,697,231	-	14,710,593
50	621-053	Certified Registered Nurse Anesthetist (CRNA)	54	11,709,629	6,101,357	-	17,810,986
51	621-054	Nurse Practitioner	91	1,150,067	4,327,890	-	5,477,957
52	621-055	Dosimetrist	9	375,597	-	-	375,597
53	621-056	General Clinical Technologists/Technicians	9	95,188	27,927	-	123,114
54	621-057	Chiropractor	2	-	-	-	-
55	621-058	Certified Licensed Midwife	10	-	159,409	-	159,409
56	621-059	Blindness and Visual Impairment Professions	0	-	-	-	-
57	621-060	Electroneurodiagnostic Technologist (END)	4	-	-	-	-
58	621-061	Physicists	8	883,456	-	-	883,456
59	621-099	Introduction of New Products/Services	0	-	-	-	-
<b>TOTAL -- FY 2008</b>				<b>\$ 321,877,872</b>	<b>\$ 207,195,565</b>	<b>\$ 49,382</b>	<b>\$ 529,122,819</b>

**Note:**

SLG sales are for Disaster Recovery Purchasing. Section 833 of the John Warner National Defense Authorization Act for fiscal year 2007 (Public Law 109-364) amended 40 U.S.C. 502 to authorize the Administrator of General Services to provide for the use of FSS schedules by state and local governments for the purchase of products and services to be used to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attacks.

**Table 2: Total Schedule 621 I Sales -- FY 2001 to FY 2008**

FY	VA	OGA	SLG	Total
2001	\$ 98,809	\$ -	\$ -	\$ 98,809
2002	14,568,326	3,097,840	-	17,666,166
2003	66,939,428	30,379,259	-	97,318,687
2004	136,786,293	68,244,387	-	205,030,681
2005	150,391,001	176,238,427	-	326,629,428
2006	174,428,050	217,665,592	-	392,093,642
2007	230,105,567	217,300,672	-	447,406,240
2008	321,877,872	207,195,565	49,382	529,122,819
<b>TOTAL</b>	<b>\$ 1,095,195,346</b>	<b>\$ 920,121,742</b>	<b>\$ 49,382</b>	<b>\$ 2,015,366,470</b>

**Exhibit B**

**621 I Contracts Examined by the Office of Contract Review**

**Report Designation:**

Contract Effective Date:  
 Total Sales -- Award to End of FY 2008:  
 Geographic Coverage:  
 Total SINs on Contract:  
 Total Physician SINs (Note 1):  
 Nursing SINs (Note 2):  
 Other SINs (Note 3):  
 OCR Review Activity:

<b>Contract # 1</b>	
Contract Effective Date:	September 1, 2003
Total Sales -- Award to End of FY 2008:	\$281,076,011
Geographic Coverage:	50 States, Washington D.C., & Puerto Rico
Total SINs on Contract:	50
Total Physician SINs (Note 1):	24
Nursing SINs (Note 2):	4
Other SINs (Note 3):	22
OCR Review Activity:	Survey

<b>Contract # 2</b>	
Contract Effective Date:	August 31, 2001
Total Sales -- Award to End of FY 2008:	\$187,424,021
Geographic Coverage:	50 States, Washington D.C.
Total SINs on Contract:	36
Total Physician SINs (Note 1):	22
Nursing SINs (Note 2):	2
Other SINs (Note 3):	12
OCR Review Activity:	Survey & contract extension pre-award review. Report issued March 5, 2008.

<b>Contract # 3</b>	
Contract Effective Date:	August 31, 2001
Total Sales -- Award to End of FY 2008:	\$123,825,561
Geographic Coverage:	50 States, Washington D.C.
Total SINs on Contract:	24
Total Physician SINs (Note 1):	21
Nursing SINs (Note 2):	0
Other SINs (Note 3):	3
OCR Review Activity:	Survey & contract post-award review. Report issued May 6, 2009.

**Report Designation:**

Contract Effective Date:  
 Total Sales -- Award to End of FY 2008:  
 Geographic Coverage:  
 Total SINs on Contract:  
 Total Physician SINs (Note 1):  
 Nursing SINs (Note 2):  
 Other SINs (Note 3):  
 OCR Review Activity:

<b>Contract # 4</b>	
Contract Effective Date:	April 10, 2002
Total Sales -- Award to End of FY 2008:	\$120,016,091
Geographic Coverage:	50 States, Washington D.C., & Puerto Rico
Total SINs on Contract:	24
Total Physician SINs (Note 1):	19
Nursing SINs (Note 2):	1
Other SINs (Note 3):	4
OCR Review Activity:	Survey

<b>Contract # 5</b>	
Contract Effective Date:	July 15, 2002
Total Sales -- Award to End of FY 2008:	\$88,324,598
Geographic Coverage:	50 States, Washington D.C.
Total SINs on Contract:	18
Total Physician SINs (Note 1):	0
Nursing SINs (Note 2):	3
Other SINs (Note 3):	15
OCR Review Activity:	Contract extension pre-award review. Report issued March 24, 2008.

<b>Contract # 6</b>	
Contract Effective Date:	December 24, 2002
Total Sales -- Award to End of FY 2008:	\$84,278,817
Geographic Coverage:	50 States, Washington D.C., & Puerto Rico
Total SINs on Contract:	37
Total Physician SINs (Note 1):	16
Nursing SINs (Note 2):	4
Other SINs (Note 3):	17
OCR Review Activity:	Survey

**Report Designation:**

Contract Effective Date:  
 Total Sales -- Award to End of FY 2008:  
 Geographic Coverage:  
 Total SINs on Contract:  
 Total Physician SINs (Note 1):  
 Nursing SINs (Note 2):  
 Other SINs (Note 3):  
 OCR Review Activity:

<b>Contract # 7</b>	
Contract Effective Date:	July 1, 2002
Total Sales -- Award to End of FY 2008:	\$71,713,482
Geographic Coverage:	50 States, Washington D.C., & Puerto Rico
Total SINs on Contract:	17
Total Physician SINs (Note 1):	0
Nursing SINs (Note 2):	4
Other SINs (Note 3):	13
OCR Review Activity:	Survey & post-award review. Report issued February 27, 2009.

<b>Contract # 8</b>	
Contract Effective Date:	June 1, 2002
Total Sales -- Award to End of FY 2008:	\$50,899,343
Geographic Coverage:	50 States, Washington D.C., & Puerto Rico
Total SINs on Contract:	14
Total Physician SINs (Note 1):	13
Nursing SINs (Note 2):	0
Other SINs (Note 3):	1
OCR Review Activity:	Survey

<b>Contract # 9</b>	
Contract Effective Date:	August 31, 2001
Total Sales -- Award to End of FY 2008:	\$29,875,481
Geographic Coverage:	50 States, Washington D.C., & Puerto Rico
Total SINs on Contract:	46
Total Physician SINs (Note 1):	24
Nursing SINs (Note 2):	4
Other SINs (Note 3):	18
OCR Review Activity:	Survey & contract post-award review. Report issued June 25, 2008.

**Report Designation:**

Contract Effective Date:  
 Total Sales -- Award to End of FY 2008:  
 Geographic Coverage:  
 Total SINs on Contract:  
 Total Physician SINs (Note 1):  
 Nursing SINs (Note 2):  
 Other SINs (Note 3):  
 OCR Review Activity:

<b>Contract # 10</b>	
Contract Effective Date:	April 23, 2003
Total Sales -- Award to End of FY 2008:	\$21,204,613
Geographic Coverage:	29 States
Total SINs on Contract:	7
Total Physician SINs (Note 1):	0
Nursing SINs (Note 2):	3
Other SINs (Note 3):	4
OCR Review Activity:	Post-award review from a voluntary disclosure. Report issued June 25, 2008.

<b>Contract # 11</b>	
Contract Effective Date:	March 21, 2002
Total Sales -- Award to End of FY 2008:	\$16,557,278
Geographic Coverage:	29 to 50 States (depending on SIN)
Total SINs on Contract:	3
Total Physician SINs (Note 1):	0
Nursing SINs (Note 2):	3
Other SINs (Note 3):	0
OCR Review Activity:	Survey

**Total Sales -- Award to End of FY 2008 -- All 11 Contracts Examined:**

\$1,075,195,297

**Total Sales -- Award to End of FY 2008 -- All 621 I Contracts:**

\$2,015,366,470

**Percentage:**

53%

**Notes:**

(Note 1)  
 (Note 2)

The Physician SINs are SINs 621-001 thru 621-024, as shown in Exhibit A of this report.

For the purposes of this table, the primary nursing SINs are the four major nursing SINs from Exhibit A -- SIN 621-025 Registered Nurse, 621-038 Licensed Practical/Vocational Nurse, 621-040 Nurse Assistant, and 621-054 Nurse Practitioner.

(Note 3)

This row reflects other nursing-related SINs and Allied Health SINs.

**621 I Solicitation Commercial Sales Practices Disclosures**

**Exhibit 3 - Attachment 1a, Total Actual Sales / Projected Sales Worksheet**

Time Frame Disclosed: MM/DD/YYYY to MM/DD/YYYY

From the CSP Disclosures in Attachment 1b:

Total Company Sales Disclosed \$ -

Total Commercial Sales \$ - or of total sales

Total Government Sales \$ - or of total sales

All Sales Total \$ -

Total Sales for All Offered Line Items: \$ -

Percentage of Federal Government Sales for the SINs Offered: \_\_\_\_\_

Percentage of Commercial Sales for the SINs Offered: \_\_\_\_\_

Special Item Number	Actual Federal Sales (by SIN)	Actual Commercial Sales (by SIN)	Projected Sales Under This Contract	List additional comments here or in an attachment
-	\$ -	\$ -	\$ -	Enter As Needed
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
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-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
-	\$ -	\$ -	\$ -	
Totals	\$ -	\$ -	\$ -	\$ -

Note: Definition of commercial sales includes any sales to state and local governments.

**Exhibit C  
(Page 2 of 5)**

**621 I Solicitation Commercial Sales Practices Disclosures**

**Exhibit 3 - Price Proposal Attachment 1b, Commercial Sales Practice (CSP) Disclosures**

**Q. Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the prices/rates (discounts, concessions, terms and conditions in any combination) which you offer the Government equal to or better than that offered to any customer acquiring the same items regardless of quantity or terms and conditions?**

\_\_\_\_\_ **Yes** \_\_\_\_\_ **No**

*(If you answer NO to this question, on an attachment provide an explanation of why the net prices terms and conditions offered to the Government are not equal to or better than offered to any commercial customer acquiring the same items.)*

**Q. Do any deviations from your written policies or standard commercial sales practices disclosed in the charts the chart below ever result in better prices than indicated?**

\_\_\_\_\_ **Yes** \_\_\_\_\_ **No**

*(If you answered yes to this question, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the charts above and explain how often they occur. Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing.)*

SIN 621-	Job Title	Proposed FSS Ceiling Price	Most Frequently Billed Commercial Price	% Difference	Commercial Lowest Billed Price	% Difference	Lowest Billed Location	Commercial Highest Billed Price	Highest Billed Location

**Exhibit 3 - Attachment 1b  
Commercial Sales Practice (CSP) Disclosures Definitions**

**Column A:** Special Item Number per the Schedule of Services

**Column B:** Labor Category Description

**Column C:** Net Price Offered the Government under this solicitation

**Column D:** Price/Rate Most Frequently Billed to all commercial customers. **On an attachment provide an explanation of methodology used to arrive at this figure.**

**Column E:** Will calculate itself.

**Column F:** Lowest Net Price/Rate Billed currently being billed/paid by to any commercial customers under an active agreement or within 30 days of this submission, consistent with the directions provided in the General Information for Submission of Pricing and Commercial Sales Practice Disclosures. If your firm does not have substantial commercial sales, then provide this disclosure for any customer, including Federal Government, in which you are currently doing business with. In the event that your firm does not currently have a placement for an individual labor category, please provide the most recent contract price billed and the date of the invoice. It may be necessary to factor out travel costs in your disclosure so a meaningful comparison can be conducted. The Government may request copies of invoices to validate disclosure.

**Column G:** will calculate itself.

**Column H:** Location of the lowest price currently being billed.

**Column I:** Disclose the highest price currently being invoiced to/or paid by any commercial customer under an active agreement or within 30 days of this submission, consistent with the directions provided in the General Information for Submission of Pricing and Commercial Sales Practice Disclosures. If your firm does not have substantial commercial sales, then provide this disclosure for any customer, including Federal Government, in which you are currently doing business with. In the event that your firm does not currently have a placement for an individual labor category, please provide the most recent contract price billed and the date of the invoice. It may be necessary to factor out travel costs in your disclosure so a meaningful comparison can be conducted. The Government may request copies of invoices to validate low and high disclosures.

**Column J:** Location of the highest price currently being billed.

**Exhibit C  
(Page 3 of 5)**

**621 I Solicitation Commercial Sales Practices Disclosures**

**Exhibit 3 - Price Proposal Attachment 1c  
Other Commercial Discounts Concessions / Terms & Conditions**

Complete the chart below clearly stating your firms standard commercial terms and Most Favored Customer (MFC) terms, as well as your firms offered terms to the government under this solicitation. Please note that only pricing approaches for which you can provide supporting documentation demonstrating that it is in fact a commercial practice will be accepted.

*Note: If your firm has not billed any of these concessions or does not have commercial terms in any of these areas, offerors should enter "not offered commercially" in the commercial terms column. If your firm does not wish to offer any of these concessions under this solicitation, offerors should enter "not offered under this solicitation" in the terms offered to the government column.*

**1. Shift Differentials (e.g. evenings, nights, & weekends):**

Commercial Terms	Terms Offered to Government Under this Solicitation

**2. Overtime Rate(s) (and double time rate if applicable):**

Commercial Terms	Terms Offered to Government Under this Solicitation

**3. Holiday Rate(s):**

Commercial Terms	Terms Offered to Government Under this Solicitation

**4. On-Call Terms:**

Commercial Terms	Terms Offered to Government Under this Solicitation

**5. Call Back Rate(s):**

Commercial Terms	Terms Offered to Government Under this Solicitation

**6. Payment Terms:**

Commercial Terms	Terms Offered to Government Under this Solicitation

Also, how often do you bill your commercial customers (i.e. bi-weekly, monthly)?

--

**621 I Solicitation Commercial Sales Practices Disclosures**

**Exhibit 3 - Price Proposal Attachment 1c  
Other Commercial Discounts Concessions / Terms & Conditions (Continued)**

**7) Credit Card Acceptance Terms:**

Commercial Terms	Terms Offered to Government Under this Solicitation

**8. Minimum Order:**

Commercial Terms	Terms Offered to Government Under this Solicitation

Also, please provide a description of any commercial policies/standards your firm has in regards to permanent placement fee's, lead times, and late order cancellation:

Commercial Terms

\* Please note that permanent placement fees are not covered under the 621I Schedule. Therefore, offerors are encouraged to take this into consideration when establishing the proposed minimum order levels under this solicitation.

**9. Work Week (i.e. Sunday - Saturday):**

Offerors Commercial Terms

\* Please note the standard Government workweek is Sunday - Saturday.

**10. Geographic Coverage Area(s):**

Offerors Commercial Terms	Terms Offered to Government Under this Solicitation *

\* Please note that pursuant with 552.212-73 Evaluation, proposals that are determined to be unrealistic in terms of technical commitment, lack of technical competence and/or demonstrated experience will be rejected in whole or in part. Therefore, offerors are encouraged to propose under this solicitation those locations in which the offeror has recent corporate experience relevant to this solicitation.

**11. Background Investigations:**

Please provide a description of your firms standard background investigation(s) for employees that will be working under this contract (i.e. state-wide & national criminal investigations, sex offender investigations, etc):

--

**12. Other:**

Offerors Commercial Terms	Terms Offered to Government Under this Solicitation *

**621 I Solicitation Commercial Sales Practices Disclosures**

ATTACHMENT 1D, SAMPLE PRICING VALIDATION (BUILD-UP) FORMAT

<u>DIRECT COSTS</u>		(SIN+Description)	(SIN+Description)	(SIN+Description)	(SIN+Description)
<u>DIRECT LABOR COSTS</u>					
Wages		\$	\$	\$	\$
Hourly Rate		\$	\$	\$	\$
<u>Fringe Benefit Costs</u>					
FICA	0.00%	\$	\$	\$	\$
FUTA	0.00%	\$	\$	\$	\$
SUTA	0.00%	\$	\$	\$	\$
Workers Comp	0.00%	\$	\$	\$	\$
Health Insurance	\$ MO	\$	\$	\$	\$
<u>Misc Costs</u>					
Insurances (malpractice + others not listed above)	0.00%	\$	\$	\$	\$
Vacation/Holiday	HRS	\$	\$	\$	\$
<b>TOTAL DIRECT COSTS</b>		\$	\$	\$	\$
OVERHEAD / G&A (INDIRECT COSTS)	0.00%	\$	\$	\$	\$
<b>TOTAL DIRECT &amp; INDIRECT COSTS</b>		\$	\$	\$	\$
PROFIT MARGIN	0.00%	\$	\$	\$	\$
Funding Fee	1%	\$	\$	\$	\$
<b>CONTRACT PRICE (Hourly Rate)</b>		\$	\$	\$	\$

**Notes:**

Rates do not include per diem, transportation and housing.  
 Rates do not include shift differentials, holiday differentials or non-guaranteed differential  
 Rates do include malpractice insurance.

## Management Comments

**Department of  
Veterans Affairs**

## Memorandum

Date: May 26, 2010

From: Deputy Assistant Secretary for Acquisition and Logistics (001AL)

Subj: Draft Report: Special Review of Federal Supply Schedule 621 I—Professional and Allied Healthcare Staffing Services (WebCIMS 449548)

To: Director, Federal Supply Schedule Division, Office of Contract Review (55)

1. This memorandum transmits Office of Acquisition and Logistics (OAL) comments in response to your conclusions and recommendations from the Office of Inspector General (OIG) draft report entitled, "Special Review of Federal Supply Schedule 621 I – Professional and Allied Healthcare Staffing Services."

- OIG Recommendation: "We recommend that the Deputy Assistant Secretary for OA&L direct the NAC to: (1) not award any 621 I contracts unless the Contracting Officer can determine that the prices offered are fair and reasonable;..."
- OAL Response: Concur. National Acquisition Center (NAC) contracting officers are already required to make a determination that offered pricing is fair and reasonable prior to awarding any Federal Supply Schedule (FSS) contract, including those under the 621 I Schedule. In conjunction with OAL's implementation of the stated recommendations, OAL will direct the NAC to remind contracting officers of their responsibilities to not award any 621 I contract unless they can determine that the offered pricing is fair and reasonable.
- OIG Recommendation: "... (2) eliminate national NTE pricing as a pricing objective, and to establish pricing objectives under 621 I contracts that are consistent with the goals of the FSS Program (MFC pricing, or the best pricing to commercial customers purchasing under similar terms and conditions as the Government);..."
- OAL Response: Concur. Because commercial customers are not buying services via national Not to Exceed (NTE) rates, establishing FSS prices for services in a manner that emulates the commercial marketplace has been a challenge. Coinciding with OAL's implementation of the stated recommendations, OAL will direct the NAC to develop pricing goals for 621 I Services that will focus on MFC pricing and better reflect actual commercial practices in the healthcare services industry and seek regional or local rates when national rates are not appropriate.
- OIG Recommendation: "... (3) revise the 621 I Solicitation's CSP format to require disclosure of information relevant to Recommendation 2;..."

**Appendix A**  
**(Page 2 of 3)**

Page 2.

Director, Federal Supply Schedule Division, Office of Contract Review (55)

- OAL Response: Concur. The NAC revised the 621 I Solicitation's Commercial Sales Practices (CSP) format over time as it has gained familiarity with the healthcare services marketplace. However, we agree that additional changes are needed to make the CSP a more effective price analysis tool. More informative CSP disclosures will allow the NAC Contracting Officers to make price reasonableness determinations based primarily on the CSP disclosures, as is done under other FSS Schedules. To achieve this goal, OAL will direct the NAC, in consultation with the OIG Office of Contract Review, to develop a revised CSP format for the 621 I Solicitation.
- OIG Recommendation: "...(4) use price analysis methodologies that place significant reliance on the 621 I CSP disclosures, once revised;..."
- OAL Response: Concur. Implementation of OIG Recommendation (3) will allow NAC contracting officers to use price analysis methodologies that place significant reliance on the CSP disclosures, in order to establish price reasonableness. OAL will direct the NAC to take steps to implement Recommendation (4) once action on Recommendation (3) is completed.
- OIG Recommendation: "...(5) cease using comparisons to existing FSS prices and/or national market surveys as methodologies for establishing price reasonableness; and..."
- OAL Response: Concur. Implementation of OIG Recommendation (3) will allow NAC contracting officers to use price analysis methodologies that place significant reliance on the CSP disclosures, in order to establish price reasonableness. OAL will direct the NAC to take steps to implement Recommendation (5) once action on Recommendation (3) is completed.
- OIG Recommendation: "...(6) inform all FSS customers they should not rely on current 621 I NTE prices in making best value determinations, until such time as the above recommendations are implemented. Instead, FSS customers should be advised to make best value determinations based on either: (a) adequate price competition among FSS contractors, or (b) open market competition, if adequate competition among FSS contractors cannot be achieved."
- OAL Response: Concur. OAL will direct the NAC to clarify guidance to FSS customers regarding how 621 I NTE rates should be used and interpreted, including the limitations of these rates when making best value determinations at the ordering activity level.

**Appendix A**  
**(Page 3 of 3)**

Page 3.

Director, Federal Supply Schedule Division, Office of Contract Review (55)

- OIG Recommendation: “We also recommend that the Deputy Assistant Secretary for OA&L direct VA ordering activities to: (7) cease issuing orders under 621 I Schedule contracts with all inclusive rates.”
- OAL Response: Concur. OAL will instruct VA ordering activities not to award an “all-inclusive rate” under any task orders and to comply with FAR 8.405-2 and FAR Subpart 16.6--*Time-and-Materials, Labor-Hour and Letter Contracts*. OAL will also issue policy concerning the use of labor hour contracts and provide additional training to VA ordering activities. Ordering activities will be instructed that all-inclusive rates inappropriately combine cost elements (labor and travel costs) that should be priced and evaluated separately.

2. Thank you for the opportunity to review and respond to the OIG’s conclusions and recommendations. Should you have questions, need additional information or desire to discuss any of the proposed actions, please contact Ms. Carole O’Brien, Director, FSS Service, NAC, at (708) 786-4957, or via e-mail at: [carole.obrien@va.gov](mailto:carole.obrien@va.gov).

*(original signed by:)*  
Jan R. Frye

**Appendix B**

**OIG Contact and Staff Acknowledgements**

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OIG Contact	Maureen Regan
Acknowledgments	Justice Baek Scott Coker Gary Petrovich Kathryn Wick

## Appendix C

### Report Distribution

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