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Dear Senator Javits:

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This is our report in response to your request of March 27, 1972, that the General Accounting Office consider Eye Gate House's complaint that the General Services Administration (GSA) insists on discounts from commercial catalog prices as a prerequisite for the award of a Federal Supply Schedule contract for training aids and devices.

In letters to GSA on February 28, 1972, and to you on March 14, 1972, Eye Gate House stated that the award should not be based on whether its products could be purchased at discounts but on whether the products were best or peculiarly suited for ordering agencies' needs. Eye Gate House (1) took exception to GSA's position that the Government should get discounts because suppliers benefit from schedule contracts through reduced contracting effort and a potentially larger sales volume and (2) stated that the schedule contract method of procurement restricted agency access to its unique products.

We interviewed GSA officials, reviewed applicable Federal procurement regulations, and examined selected schedule contract files. We also held discussions with officials of Eye Gate House and the Bureau of Indian Affairs, Department of the Interior.

In discharging its responsibility for the economical procurement of commercially available products for Federal agencies, GSA establishes schedule contracts with suppliers of essentially similar items so that the agencies can order the products which best fulfill their particular requirements. In negotiating the contracts, GSA obtains the most favorable terms--discount and other concessions--available from one of the suppliers and then seeks comparable concessions from the other suppliers.

Our examination of GSA's practice of obtaining comparable discounts indicates that it is a practicable technique for establishing prices with a large number of suppliers furnishing similar commercial products and that it is not detrimental to

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the interests of the Government. In evaluating GSA's implementation of this technique in the procurement of training aids and devices, we considered the fairness of the technique to the suppliers and concluded that it was not prejudicial to Eye Gate House. Although Eye Gate House was not awarded a schedule contract, agencies requiring its products will have access to them.

FEDERAL SUPPLY SCHEDULES

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471) made GSA responsible for the procurement of common-use supplies and services for Federal agencies and authorized recipients. The Federal Supply Service performs GSA's procurement and supply distribution mission through (1) a stores stock program for replenishment of supplies stocked in GSA depots for shipment to Federal agencies when needed, (2) a program of direct delivery from suppliers to Federal agencies under definite-quantity contracts, and (3) indefinite-quantity term contracts listed in Federal Supply Schedules--called schedule contracts--which are used by Federal agencies to place orders directly with listed suppliers.

GSA uses schedule contracts for commercially available items when definite-quantity contracts for stockage or for direct delivery are either not feasible or offer no advantage for reasons including infrequent ordering of the items, difficulty of forecasting requirements, or infeasibility of developing Federal specifications. By using the Schedule, under which a number of suppliers agree to sell essentially similar items, the agencies can order the specific items which best fulfill their particular requirements. More than 700,000 items are available, and, during fiscal year 1971, orders placed against schedule contracts amounted to about \$1.5 billion.

GSA POLICY REQUIRING DISCOUNTS FROM COMMERCIAL PRICES

The purpose of schedule contracts is to obtain more favorable prices for the Government by offering suppliers benefits, including the elimination of the need for order-by-order

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negotiation by individual Federal agencies and a potentially larger sales volume.

GSA has determined that schedule contracts for certain commercially available items--including training aids and devices--should be negotiated multiple awards, rather than formally advertised awards to a single offeror, because adequate Federal specifications and standards are not available for the varying requirements of the many agencies on the makes, models, types, and current designs of products.

The training aids and devices sold by various suppliers differ. GSA asserts that catalog prices of items sold in substantial quantities to the general public provide the best measure of the items' relative value. It uses these prices as a starting point in the negotiation process. GSA reasons that (1) if comparable concessions are negotiated with each supplier, the prices paid by the Government remain in the same relationship and (2) if some suppliers having similar products and marketing techniques are awarded contracts without concessions or with substantially less favorable terms, the Government would be paying higher prices than warranted by market forces.

GSA's policy is to not award schedule contracts to suppliers unless the terms are at least comparable with those given to suppliers' most favored customers. In negotiating the multiple awards, GSA groups suppliers' offers by types of items and by marketing techniques--such as products sold through manufacturers or dealers--and compares the offers to determine which supplier within each group offered the most favorable concessions, such as discounts from catalog prices, prompt-payment discounts, warranties, and delivery terms.

GSA then negotiates with each responsive supplier to obtain additional concessions. When GSA believes that it has negotiated the most favorable terms and conditions obtainable, a contract is awarded to that supplier. Other suppliers offering comparable concessions also are awarded contracts.

When the offers cannot be placed into groups because dissimilarities in the products or in marketing techniques make comparisons impracticable, GSA attempts to obtain concessions by negotiating with each responsive supplier and awarding schedule contracts after obtaining terms and conditions considered favorable to the Government. This technique was used by GSA for negotiating with Eye Gate House for most of its products.

Schedule contracts for
training aids and devices

Training aids and devices are in Federal Supply Classification Group 69 covering over 14,000 items, such as slides, filmstrips, and phonograph records, under about 100 contracts. A nationwide Schedule for these items was established on September 1, 1971. Suppliers have reported to GSA that, as of April 30, 1972, purchases amounted to about \$400,000. Previously GSA had entered into regional, indefinite-quantity term contracts with certain suppliers for use by GSA and the Bureau of Indian Affairs within the States of Arizona, Colorado, New Mexico, Utah, and Wyoming.

In negotiating contracts for the nationwide Schedule, GSA requested about 1,000 suppliers to submit their catalogs or pricelists and the prices and terms under which they were willing to sell their products to the Government. The suppliers were required to provide information on their sales to other customers and to certify that the prices offered to GSA were based on established catalog or market prices and that substantial quantities of the items were sold to the general public at those prices.

As of June 1, 1972, 121 suppliers had submitted offers to GSA and 98 had been awarded contracts. GSA told us that each of the 98 suppliers had given GSA discounts. Our examination of selected files corroborated GSA's statement and showed that, of the 23 suppliers who were not awarded contracts, nine--including Eye Gate House--had not offered discounts which GSA considered satisfactory. The 14 other

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suppliers had not been awarded contracts because (1) additional information requested by GSA had not been submitted, (2) the offer was not responsive, (3) the supplier withdrew its offer, or (4) negotiations were in progress.

AGENCY ACCESS TO PRODUCTS
NOT AVAILABLE THROUGH SCHEDULE CONTRACTS

Use of the schedule contracts by agencies for ordering training aids and devices generally is mandatory for Federal agencies in the executive branch and is optional for agencies in the legislative and judicial branches of the Government. Each Schedule specifies the executive agencies which are required to place orders against schedule contracts.

Any Federal agency for which use of the Schedule is mandatory may be authorized to procure from other commercial sources directly if it determines that the needed item, or a similar item serving the same functional purpose and meeting the agency's requirements, is not available through a schedule contract. Procurement from other sources also may be authorized if (1) the delivery provisions offered in the Schedule do not meet the agency's requirements or (2) the quantity or dollar amount needed is less than minimum orders or more than maximum orders specified in the Schedule.

Before making purchases from other sources, the agency is required to submit waiver requests to GSA. The request describes the items needed and compares the price and technical differences between the requested items and those available through schedule contracts. When GSA believes the agency has reasonably justified its need to procure from alternate sources, authorization is granted.

GSA'S EVALUATION OF
EYE GATE HOUSE POSITION

Between January 15 and December 31, 1971, Eye Gate House had in effect a regional, indefinite-quantity term contract negotiated by GSA's Region 8 for the direct supply of

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educational films and filmstrips to the Bureau of Indian Affairs within five States. No discounts were given. Eye Gate House sales through this contract amounted to about \$5,200.

On March 22, 1971, Eye Gate House submitted an offer to GSA for the nationwide Schedule to be established September 1, 1971. The offer was returned to Eye Gate House for more information on March 25, 1971, because of omissions, including the required certification that the offered prices were based on established commercial prices. On December 1, 1971, Eye Gate House submitted another offer which was considered by GSA to be incomplete. In January 1972 GSA began negotiations to obtain the needed information and the discounts from Eye Gate House commercial prices.

Eye Gate House policy is to sell its products at commercial catalog prices without discount. In correspondence and telephone conversations between January and July 1972, Eye Gate House said that it should be awarded a contract because (1) purchases by the Government should not be based on whether the products could be purchased at a discount but rather on whether the products could perform a specific job, (2) GSA offered no advantage which warranted its entitlement to discounts, and (3) GSA's discount requirements would eliminate access by a number of Government institutions to Eye Gate House's unique products.

GSA advised Eye Gate House that (1) GSA incurred considerable cost in writing and administering a contract and in publishing the availability of the products for agency use and (2) there would be no advantage to the Government's contracting at the prices listed in suppliers' commercial catalogs without discount commensurate with sales volume. GSA's position is that, since agency requirements are consolidated under schedule contracts and are brought to the attention of using agencies, purchases are easier for both the supplier and the agencies to consummate. GSA also pointed out that the agencies had access to unique products by requesting waivers to make such purchases.

As of July 6, 1972, Eye Gate House had not offered discounts or other special concessions to GSA. During our examination Eye Gate House advised us that its Government sales had not been diminished although GSA had not awarded it a schedule contract. Eye Gate House stated, however, that sales took longer to transact without a contract because of the need to respond to requests for quotes from agencies.

CONCLUSIONS

Inherent in the negotiation process is the right of each party to establish conditions for entering into a contract. We believe that GSA's discount policy represents a reasonable tool for negotiating prices favorable to the Government and is not inherently unfair to suppliers. We found no evidence that (1) suppliers, including Eye Gate House, were treated in a prejudicial manner and (2) the use of the schedule contracts for training aids and devices had placed any substantial hardships or had otherwise adversely affected Eye Gate House.

We do not agree with the Eye Gate House statement that GSA is not entitled to discounts because schedule contracts offer no advantage to suppliers. Each of the 98 schedule contracts for training aids and devices was awarded on the basis of concessions. Although some suppliers may object to giving concessions to the Government, most of the suppliers offered concessions without request by GSA. It seems reasonable that these suppliers would not have given the Government such concessions unless they expected benefits from having schedule contracts.

We believe that schedule contracts could benefit suppliers through lower contracting costs and higher sales volume. We believe also that, irrespective of the benefits to suppliers, GSA's policy of seeking preferential discounts and other concessions is in accord with GSA's responsibility to contract for commercially available products at the lowest cost to the Government.

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GSA had established procedures whereby agencies needing access to products not available through the Schedule could request waivers to use other supply sources. We did not attempt to determine the administrative burden and other problems related to agency requests for waivers. We believe, however, that the problems must be weighed against the benefits these agencies receive through the use of the schedule contracts.

We trust that the foregoing information is responsive to your request. In view of the magnitude of purchases of common-use products and services, we are planning more extensive examinations into GSA's policies and practices in awarding Federal Supply Schedule contracts and into the use of such contracts by agencies. Significant matters developed from these examinations will be reported to the Congress.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James B. Aronson". The signature is written in a cursive style with a large initial "J".

Comptroller General
of the United States

C1 The Honorable Jacob Javits
United States Senate