

→ Multiple Award Schedule Contracting

When people think of Government contracts, they typically think of "bombs and bullets" – fighter jets, missiles, and war ships. This view, however, ignores the massive volume of "commercial items" – that is, items not developed uniquely for a Government purpose – purchased by the Government.,

Like any major organization, the Government purchases computers, printers, telephones, and scanners. It also purchases paper products – all kinds. And paper clips. And financial accounting services. And marketing services. And paint, band aids, tires, carpets, mops, soap, fish oil and floor polish. Simply stated, if you buy it in connection with your home or business, it is likely that the Government does as well. Your purchases may take place at the Price Club, Home Depot, CompUSA, or K Mart. The Government, however, uses the General Services Administration's Multiple Award Schedule Program, or "MAS."

Notwithstanding its applicability to commercial products, and the Government's position that its MAS Program "mirrors" commercial practices, a MAS contract is most assuredly not a commercial contract. To the contrary, it is fraught with very "uncommercial" traps and snares. The risks posed by these can be significant, including after-the-fact price adjustments, suspension or debarment from Government (federal and state) contracting, civil actions under the False Claims Act, and, in the rare case, even criminal prosecution.

Sheppard Mullin attorneys have extensive experience helping companies navigate the maze of federal regulations that governs the MAS Program. We counsel clients on whether it would be prudent under their particularized circumstances to pursue a MAS contract; we assist clients in developing MAS proposals; we help clients understand such crucial MAS clauses as the Price Reductions, Industrial Funding Fee, and Trade Agreements Act clauses, and we help them develop sensible plans for working within the constraints of those clauses. Once the client has decided to pursue the MAS Program; we develop and implement internal MAS compliance programs; conduct periodic compliance audits, assist in responding to federal audits and investigations; and – when necessary – litigate False Claims Act lawsuits brought against MAS contractors. Regardless of the product or service in question, our attorneys probably have dealt with the issue before.

The Sheppard Mullin Difference

As Byzantine as federal contracting is generally, the MAS Program is particularly idiosyncratic – and still is in its infancy. As a result, the legal team you look to for counsel and representation must not only be well versed in the applicable law, it must be well versed in the culture, traditions, and numerous informal practices of the GSA. This kind of knowledge is gained only through hands-on, in depth experience with MAS cases and frequent interchange with MAS personnel. Over the last year alone Sheppard Mullin has provided counseling and representation to an extensive list of MAS contractors and subcontractors on a diverse array of issues including:

- Counseling management regarding the benefits and risks of securing a MAS contract
- Assisting in the preparation of MAS proposals for such diverse industry products and services as computers, tools, clothing, biometric devices, and more

- Assisting with the negotiation of MAS contracts and in the modification of existing contracts, e.g., to redefine the applicable category of customer for Price Reduction Clause purposes
- Pursuing and defending against bid protests before the GAO and the Court of Federal Claims
- Defending against GSA Office of Inspector General (OIG) audits focusing on alleged Price Reductions Clause, Industrial Funding Fee, and Trade Agreements Act violations
- Counseling clients during GSA Industrial Operations Analysts (IOA) reviews
- Developing and implementing comprehensive internal MAS compliance programs
- Conducting internal MAS training
- Educating sales personnel on how to take advantage of the benefits of the MAS Program to increase sales while avoiding Price Reductions Clause problems

As a result of this experience, Sheppard Mullin is regarded as one of the leading firms in this area. Two of our attorneys have written the seminal book on the MAS Program (Chierichella & Aronie, Multiple Award Schedule Contracting (Xlibris 2002), which can be found as a standard reference text in many contractor and GSA libraries. Our leadership in this practice area is further reflected in the active role we play within the MAS community and the reputation we have with GSA itself. We meet with GSA contracting officers and supervisors frequently. We speak alongside GSA officials in conferences from coast to coast. Our national training sessions (for Federal Publications Inc., the National Contract Management Association, or for GSA itself) are highly attended by contractors and Government officials alike. Moreover, our articles on the MAS Program appear regularly in a number of national publications and we are quoted frequently as experts in the field.