

Oracle Stung By Most Favored Nations Clause

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Oracle has agreed to pay Uncle Sam almost \$200 million in a settlement related to the prices it charged the Federal Government for its products. The dispute came to light after a former employee of Oracle filed suit against the company under the False Claims Act, alleging that the Company had defrauded the Feds.

According to a [recent news report](#), the crux of the case seems to be a provision in the contract between Oracle and the Federal Government which guaranteed the Feds discounts from agreed-upon prices if Oracle offered steeper discounts to other purchasers. Provisions which grant this type of price protection are commonly referred to as “most favored nations clauses”. The Federal Government, because of its size, power and contracting guidelines, often demands such from commercial vendors.

Whenever a business negotiates to purchase goods or services it is worth trying to include a most favored nations clause in the deal. Whether this is possible will depend on bargaining power, confidentiality and other factors.

When such provisions become part of an agreement, the devil is often in the details. In most cases, the seller, which offers lower prices to another purchaser, is obligated to disclose this to the prior purchaser. However, monitoring other deals so you can report back to prior purchasers and give them refunds, or charge them less is, understandably, not high on most company to-do-lists.

Sometimes the difference between compliance and oversight (or intentional misconduct) comes down to a disgruntled employee or whistleblower.

That’s what happened in the case of Oracle, and the end result is a hefty settlement to be shared by the Federal Government and the whistleblower whose lawsuit brought the facts to light.

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