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Stories from the Front Line

GSA Schedule Tales, Tactics & Trajectories

Aaron Raddock, Managing Director, BDO
Dismas N. Locaria, Esq., Partner, Venable

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A Partner Connect Webinar

Agenda

» GSA Leadership

» FSS by the Numbers

» Status of Transactional Data Reporting (TDR)

» OIG Reports – 2016 and 2017

» Other Developments / Anecdotes

» Compliance Best Practices

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GSA Leadership

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GSA Leadership

» Significant changes in leadership

» Dec. 12th - Emily Murphy sworn in as administrator of the GSA

  » Widely viewed as a wise choice, and received a strong showing of bi-partisan support and received praise from both sides of the aisle

  » Murphy will lead 11,600 FT employees, oversee more than 371million square feet of property, and approx. $54 billion in annual contracts

» Prior GSA leadership experience as inaugural chief acquisition officer from 2005-2007

  » She Lead the transformation of the agency assisted acquisition centers and the consolidation of the Federal Supply Service and Federal Technology Service.

  » Served as GSA representative to the Federal Acquisition Regulation Council and the leader of the Civilian Agency Acquisition Council

    » Helped modernize the FAR and GSA regulations in response to the government's increase in use of service contracts (vs. commodity buys).

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GSA Leadership Goals

» Ms. Murphy's focus as administrator will include, for example:

   » Emphasizing Ethical Leadership

      » Culture at GSA to (1) put the taxpayer first, (2) encourage diversity of opinions, (3) value the contributions of all employees, and (4) promote a safe environment to report any perceived misconduct

   » Reducing duplication within the internal process and across the government

      » Reduce risks associated with outdated technology and seek shared services across the government

   » Generating additional competition at both the contract and task order level

   » Increasing Agency Transparency

      » Development of a Real Property database, make data more readily available, and improve the System for Award management to increase confidence in the integrity of the government, increase competition, and thus reduce taxpayer spend.

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GSA Leadership Goals, continued

» Task Order Pricing:

» "…I'd like to work to make sure the ceiling prices that are being set for agencies are just the beginning. When we set a price on our GSA schedule contract it's more or less like the rack rate on the back of a hotel room door, the most you will ever pay. We are trying to make sure GSA's contracting officers and our policies support really vigorous competition at the task order level because that is the amount we actually are going to spend so we want to get the best deal there, the most competition we can there." *–as told to the Senate Homeland Security and Government Affairs Committee*

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GSA Leadership, continued

» Other notable changes:

  » Alan Thomas – Federal Acquisition Service (FAS) Commissioner

    » Also brings industry experience with MAS program

  » Mary Davie – Deputy Commissioner of FAS

  » Jose Arrieta, Director for the Office of IT Schedule Contract Operations left GSA.

    » Oversaw Schedule 70, the largest IT acquisition vehicle in the government ($10+ billion dollar program)

    » Temporarily filled by Keith Nakasone Deputy Assistant Commissioner for Acquisition

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GSA Regions
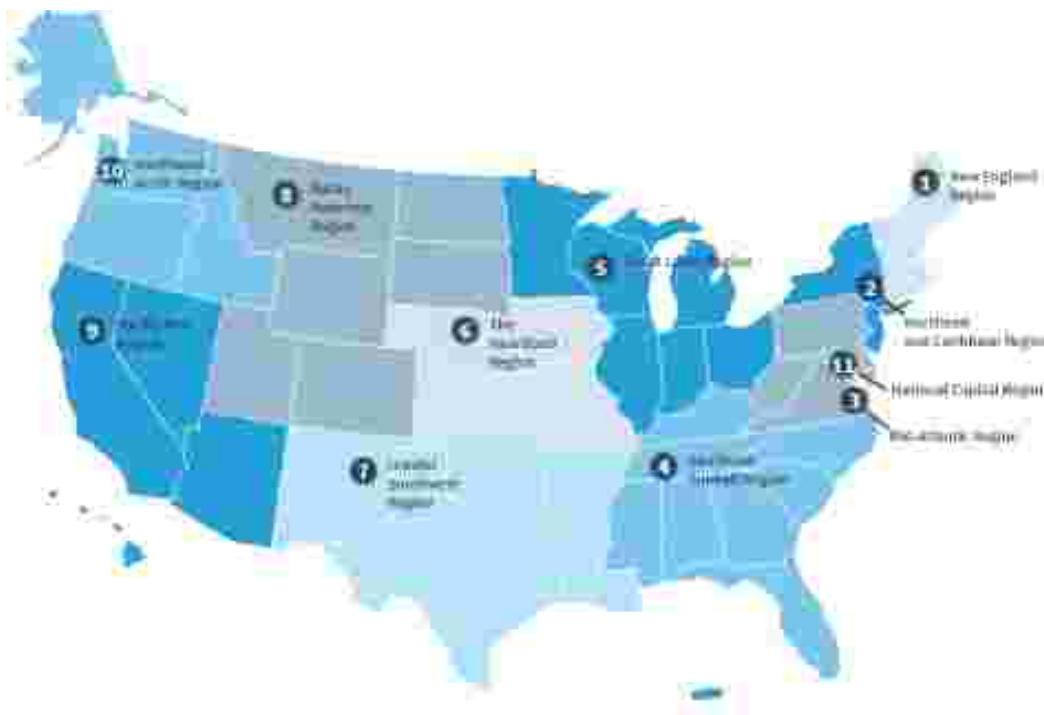
Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region 2: New Jersey, New York, Virgin Islands, Puerto Rico

Region 3: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, Europe, Africa, Middle East

Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region 5: Illinois, Indiana, Ohio, Michigan, Minnesota, Wisconsin

Region 6: Iowa, Kansas, Missouri, Nebraska

Region 7: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region 8: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region 9: Arizona, California, Nevada, Hawaii, American Samoa, East Asia, Guam

Region 10: Alaska, Idaho, Oregon, Washington

Region 11: Washington DC Metro Area

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Regional Administrator Appointments

» Region 1: Glenn Rotondo, *Acting*

» Region 2: Jeff Lau, *Acting*

» Region 3: Dena McLaughlin, *Acting*

» Region 4 : Liana D. Henry, *Acting*

» Region 5: John Cooke, *Acting*

» Region 6: Kevin Rothmier, *Acting*

Region 7: Robert Babcock, Appointed Jan 8

Region 8: Penny Grout, *Acting*

Region 9: Dan Brown, *Acting*

Region 10: Bruno Kelsas, Appointed Jan 2

Region 11: Scott Anderson, Appointed Jan 2

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FSS by the Numbers

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FSS, by the Numbers (FY2017)

» 80% of GSA Schedule Holders are small businesses that represent 39.7% of sales.

» $22,887,606,868 flowed through GSA Schedules contracts in task orders FY 2017 from Government Procurement.

» In FY17, approximately 4% of all government contract sales were procured through GSA Schedule contracts.

» GSA had approximately 17,000 MAS contracts total in FY17.

» IT 70 Schedule had a total of $10,593,700,480 in sales overall in FY 2017.

» The Professional Services Schedule (PSS) had a total of $5,588,654,676 in FY 2017.

» A GSA Office of Inspector General audit sample showed that 79% of GSA Schedule Holders did not have correct compliance systems in place to meet GSA Schedule Requirements

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Status of Transactional Data Reporting (TDR)

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Status of Transactional Data Reporting (TDR)

» Final rule on TDR issued in June 2016

  » Made TDR mandatory for new GSA Schedule offerors and voluntary for existing contractors under eight Federal Supply Schedules

    » Would be mandatory under next option period for existing schedules

  » Voluntary participation under pilot program was at almost half of the potential population

» Allows GSA to collect transactional-level data on purchases made through a non-FSS GSA contracts

  » Intended to (1) identify valuable information to assist GSA in making smarter buying strategies, (2) help agencies make smarter purchasing decisions, (3) increase competition, and (4) identify buying patterns within the federal government

  » Benefits to Vendors: (1) Eliminate Commercial Sales Practices (CSP) and Price Reduction Clause (PRC) reporting requirements and (2) Intended to reduce Compliance Burdens

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Transactional Data Reporting for Contractors

Federal Sales Data to be reported at the line-item level by contractors include:

- » Contract or blanket purchase agreement number;

- » Order number

- » Nonfederal entity

- » Description of deliverable

- » Manufacturer name

- » Manufacturer part number

- » Unit of measure

- » Quantity

- » Universal product code

- » Price per unit

- » Total price

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Transactional Data Reporting Metrics

» Viewed as a 3-year pilot to include periodic reviews

  » First Review after One Full Year of the Pilot

    » Decision point to continue, expand, adjust or discontinue

  » If the decision is made to continue, TDR's benefits expected to be apparent by Year 3 including analytical tools and government-wide buying strategy

» GSA Evaluation of the Pilot Program

  » Metrics to include (1) Competitive Pricing, (2) Increased Sales Volume, (3) Small Business Participation, (4) Macro use of transactional data, and (5) Employee and contractor feedback and findings from other reviews of the effectiveness, among others

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Status of Transactional Data Reporting (TDR)

» Viewed as a 3-year pilot to include periodic reviews

    » Designed first review after one full year of the pilot

        » Decision point to continue, expand, adjust or discontinue

» Aug. 2017, announced that TDR Pilot Program will be voluntary for all (except for enhanced OS4 SINs under reopened Schedule)

    » For those contractors who were previously required to participate, an optional one-time reverse modification is offered to undo the TDR acceptance and use CSP/PRC practices

        » Contractors who voluntarily accepted TDR Implementation Mass Mod A509 are required to stay in

    » For those contractors who opt in to TDR now, there will be no reversal once elected

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TDR Questions for Contractors

» How well are Contracting Officers being trained related to TDR?

» How will GSA use this transactional data to evaluate pricing for less comparable categories such as professional services?

» What role will GSA's Office of Inspector General play in contract negotiations and audits going forward?

» Given that the new rule allows the GSA CO to request additional data will they default to CSP information

» Before accepting TDR ask questions like:

  » What will happen to prior pricing disclosures?

  » How will the CO evaluate price reasonableness?

  » How to preserve your unique pricing structure, if applicable?

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For Contractors Who Opt-Out of TDR

» Remember, you will need to:

   » Provide Updated CSP Information, Current Price List etc.

   » (Re)establish a Most Favored Customer and Basis of Award Customer

   » Identify your Price/Discount Relationship for PRC Purposes

   » Ensure Pricing is Fair and Reasonable

   » Updated your contract through an official modification

» Timing:

   » Effective on the first day of the next business quarter

   » PRC will take effect on the first day of the business quarter following the date of the modification to opt-out

   » First 72A reporting period will begin on the first day of the business quarter following the date of the modification to opt-out

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OIG Reports – 2016 & 2017

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OIG Overview

» Mission is to detect waste, fraud, abuse, and misconduct in GSA operations, programs, and personnel and to promote economy and efficiency.

» Preaward Audits – Provide GSA COs with information for negotiating fair and reasonable GSA contract prices

  » TDR has not affected OIG's preaward audit workload

» Postaward Audits – Audit the contractor's adherence to contract T&Cs

» Approx. 15,000 MAS contracts; 40-50 contracts audited per year

» Between FYs 2014-2017, OIG issued 237 audit reports identifying:

  » $2.5 billion recommended funds to be put to better use

  » $97.6 million in questioned costs

» Since FY 2014, OIG has recovered more than $250 million through settlement of False Claims Act cases

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OIG Overview

» Common Audit Findings:

  » Contractor did not submit current, accurate, and complete information;

  » Did not maintain sales monitoring and billing systems that ensure proper administration of the PRC and billing provisions in the contract

  » Did not adequately track and report schedule sales for IFF payment purposes; did not correctly calculate and submit IFF payments;

  » Overcharged or overbilled GSA's federal government customers;

  » Did not comply with PRC provisions;

  » Did not comply with the Buy American Act or Trade Agreement Act;

  » Assigned unqualified employees to billable positions on GSA schedule task orders; and

  » Did not adequately segregate and accumulate labor hours, material costs, and ODCs on T&M TOs

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OIG Overview

» Mandatory Disclosures, Common Subjects 2008-2017:

  » Defective Pricing and PRC – 29%

  » General Overbilling – 24 %

  » Employee Fraud – 12%

  » Trade Agreement Act Violation – 10%

  » Kickbacks/Bribes, Unqualified Labor, Subcontracting Reporting, False Size/Status Representation, SCA violation, Charges to Wrong Order, etc. – 25%

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OIG Sept. 2016 Report

» On September 18, 2016, GSA OIG issued a memorandum to the FAS Commissioner, detailing numerous concerns.

» The OIG lumped them into two broad categories, each of which included several findings:

    » The failure of the Schedules program to serve as the lowest overall cost alternative to the government

        » CSP disclosures are insufficient to establish fair and reasonable pricing

        » The PRC was negated by ineffective basis of award customers

        » GSA is failing to maximize savings identified in pre-award audits

    » Contractors' general failure to comply with their Schedule contract requirements

        » Contractors are providing the government with unqualified labor

        » Contractors have inadequate reporting systems and are miscalculating their IFF payments

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CSP Disclosures Are Insufficient to Establish Fair and Reasonable Pricing

» The OIG found:

  » 79% of audited contractors in FY 2014 submitted inaccurate CSP information to GSA for the basis of award of their contract.

  » 39% of audited contractors did not offer schedule pricing that was equal to or better than that offered to its most favored customer. This amounted to a total loss of nearly $79M to the government and significant penalties for the contractors.

» Failure to accurately submit CSP information can lead to:

  » Defective pricing; Overbilling; Inaccurate reporting

  » False Claims Act violations - Significant civil penalties; If actual knowledge, potential criminal penalties

  » Suspension or debarment

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GSA Failing to Maximize Savings Identified in Pre-Award Audits

» The OIG found:

  » Across 24 audited contracts, the OIG identified during pre-award audits cost savings of approximately $221 million.

  » Notwithstanding, GSA realized only $93 million (43%) of those savings.

» What does this mean in 2017?

  » More pre-award audits as they identify additional savings.

  » Increased pressure to drive pricing down.

» This finding, however, is based on at least two faulty presumptions:

  » "Fair and reasonable pricing" (the regulatory standard) is the lowest price, and

  » GSA unilaterally determines the pricing.

» Both presumptions are false and should be rejected on various bases.

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Contractors Have Inadequate Reporting Systems and Are Miscalculating Their IFF Payments

» Schedule contractors are required to pay an Industrial Funding Fee (IFF) of 0.75% on all Schedule sales to GSA to fund the program.

  » Contractors should have an adequate system in place to ensure that these sales can be accumulated and reported accurately, as required by GSAR 552.238.74.

» 43% of the audited contractors did not have adequate systems in place to accurately monitor, accumulate, and report Schedule sales.

» 83% of the audited contractors improperly computed IFF, resulting in $2.8 million in unpaid IFF in FY 2014.

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OIG March 21, 2017 Report

» GSA OIG Report, "Audit of Price Evaluations and Negotiation for the Professional Services Schedule Contract"

  » Federal Acquisition Service (FAS) is not consistently evaluating and negotiating contracts and options.

  » FAS consolidated certain pre-existing contracts into the PSS, which resulted in the award of new contracts without establishing price reasonableness, as required by the [FAR]. Contracting officers also used a combined 'Pre and Price Negotiation Memorandum' template that does not include all information required by the FAR and does not conform to FAS policy. Finally, contract files lack key information necessary to support contracting officers' fair and reasonable pricing determinations.

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2017 Semiannual Report to the Congress

» During FY 2017, OIG Activities by the Numbers:

  » Over $287 million in recommendations that funds be put to better use and questioned costs

  » $121 million in criminal, civil, administrative, and other investigative recoveries

  » 87 reports assisted management in approving efficiency and effectiveness

  » 134 new investigations opened, 205 cases closed

  » 107 contractor/individual suspensions and 95 contractor/individual debarments

  » 12 Mandatory Disclosure audits completed with $14.6 million in settlement/recovery

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2017 Semiannual Report to the Congress

» GSA OIG reported that for every $1 invested in preaward audits, at least $10 in savings from lowered prices or more favorable contract terms are achieved

» Between April 1 and Sept 30, 2017, management decisions were made on 23 preaward audit reports with recommendations of $109 million of funds to be put to better use. Management agreed with over 99% of findings.

  » 13 contracts did not submit current, accurate and complete information;

  » 12 contractors did not comply with PRC provisions;

  » 11 contractors did not adequately report sales for IFF;

  » 8 contractors overcharged GSA customers;

  » 3 contractors had unqualified employees billed to positions

  » 1 contractor did not adequately segregate and accumulate labor hours, material costs, and ODCs for T&M orders

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Other Developments / Anecdotes

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Other Developments

» Best-in-Class (BIC) Category Management is a government-wide acquisition designation for contracts and vehicles defined by OMB that can be used by multiple agencies

» Advantages of receiving BIC designation:

  » Allows acquisition experts to take advantage of pre-vetted, gov't-wide contract solutions

  » Supports a gov't-wide migration to solutions that are mature and market-proven

  » Assists in the optimization of spend, within the gov't-wide category management framework

  » Increases the transactional data available for agency level and gov't-wide analysis of buying behavior

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Other Developments

» Big push in 2017 to execute BIC

  » Office of Federal Procurement Policy (OFPP) released a draft memo to all agencies to set goals for using BIC and implementing demand management by analyzing procurement data and making decisions on who to buy from and how to buy from them

  » OASIS and HCaTs Designated Best-in-Class

» Multiple government sources have expressed concerns with the memo

  » Application to more complex/mission-related contracts is unfitting

  » "It's like picking winners and losers. It could lead to less competition and higher prices"

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Other Developments / Anecdotes

» Category management and reduction in number of IDIQ/Schedule contracts

» Awarding cost reimbursable task orders

» Adding an ODC SIN / Final rule on OLMs

» GSA Schedule "Fast Lane"

» Applying SCA WDs at the task order level

» Recent GSA OIG audit push?

» Struggles with the cost build approach

» Negotiations of PRC terms

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Compliance Best Practices

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Compliance Best Practices

» Educate your team on GSA and Implications

  » Contracts, Proposal Teams, Sales Teams, Program Managers

» Have well documented Policies and Procedures that reflect what your company actually does – not just what it should do

» Maintain Adequate and Thorough Contract Files

  » Include updates and correspondences when applicable

  » Electronically store and flag relative information: Customer Type, Contract Type, Award Dates, etc.

» Understand your commercial sales practices

  » Document when sales discounts are provided, to whom, and under what circumstances

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Compliance Best Practices, continued

» Clearly identify your Basis of Award customer and Most Favored Customer (unless under TDR)

  » Know the pricing/discount relationship disclosed

  » Understand the implications of price reduction triggers

    » If this relationship is disturbed, disclose and update GSA prices

» Understand and disclose any commercial sales practices in existence that are unique to a customer and will not be offered to the Government.

  » Remember- disclosing it does not mean that you need to offer those terms but not disclosing could lead to problems down the road

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Compliance Best Practices, continued

» Regularly monitor your commercial sales for any potential PRC triggers

» If under TDR, establish a process for generating and reporting federal sales transactional data monthly

» Regularly monitor federal sales to ensure proper pricing and accumulated sales for IFF purposes (quarterly)

» If providing services, maintain records of Labor Category definitions and *minimum* (and maximum, if applicable) qualification thresholds

  » Maintain historic definitions for points in time if the criteria changes

  » Document labor category mapping between commercial and federal labor categories, if similar. If there are non-equivalent labor categories, document why.

  » Regularly monitor employees staffed to GSA task orders for qualification compliance; Maintain resumes and update resumes periodically

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Compliance Best Practices, continued

» For commodity sales; maintain historic price lists – both commercial and federal

» Follow Trade Agreement Act and regularly check the Country of Origin (COO) of your products

   » Document any changes in COO over time to ensure compliance at a point-in-time

» If an audit is received, respond promptly and cooperate during the audit

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Questions?

Aaron Raddock
Managing Director, Industry Specialty Services
Office: 703-336-1693
ARaddock@bdo.com

Dismas N. Locaria, Esq.
Partner, Venable LLP
Office: 202-344-8013
dlocaria@Venable.com

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Deltek at a Glance

» Delivering "Purpose-built" Capabilities for 33 Years

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» 22,000+ Customers Worldwide

» Millions Of Users In 80+ Countries

» Market Leader In Our Core Industries

» Award-winning Customer Care Processes

» Owned By Roper Technologies (NYSE:ROP)

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