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The Federal Government Provides Significant Opportunities for Asset Managers Looking to Expand Their Business

In recent months, the Federal Deposit Insurance Corporation ("FDIC") has taken over dozens of banks. As a result, the FDIC has found itself responsible for tens, if not hundreds, of million of dollars in commercial and residential real estate. Ultimately, these assets will be re-sold. However, because it could take months or even years to reassess the value of these assets and resell them, the Federal government will likely require the services of asset managers to manage and maintain these properties prior to their sale. This update suggests that asset managers may best position themselves to receive award of asset management opportunities by obtaining a General Services Administration ("GSA") federal supply schedule ("FSS") contract, as described below.

Procurement Options:

The Federal government has several approaches it may use to obtain the services of asset managers, however, the use of GSA FSS contracts may be the most beneficial to the government because it is a proven and streamlined approach that may avert the criticism and missteps that often accompany federal procurement efforts. For example, under GSA FSS procedures, bid protests, although not prohibited, are often less likely and easier to defend. Consequently, one step asset managers can take to make it easy for the FDIC and other federal agencies to hire them is to obtain a GSA Schedule contract.

GSA FSS Contracts for Asset Management Services

The GSA Schedule program is designed to harness the competitive pricing of the commercial marketplace, thereby making commercial products and services more affordable to the federal government. This goal is primarily achieved by reducing many of the federal regulatory hurdles, including cumbersome competition requirements. As a result, the GSA Schedule program boasts a "one-stop-shop" for federal agencies with access to more than 11 million commercial supplies and services.

GSA offers numerous Schedule contracts for differing products and services. For asset management services, the applicable Schedule is Schedule 520 – Financial and Business Solutions ("FABS").

Through the GSA Schedule contract process, the General GSA pre-determines (before the contractor actually receives an order for goods or services)

whether a contractor's prices are fair and reasonable and that the firm has the competency to perform the work it proposes. Once approved, the contractor will receive a contract against which federal agencies may issue task orders. It is not until an agency issues a task order that it obligates funds and is able to purchase products and/or services.

Practitioners Tips: Obtaining a GSA Schedule contract may allow asset management companies to be able to swiftly respond to opportunities with the federal government. However, as with all federal government contracts, GSA Schedule contracts require contractors to understand and comply with government unique requirements and a host of contract terms and conditions that may vary from commercial terms and conditions. Some of these provisions may include:

- Employment and labor obligations, such as those imposed by the Department of Labor's Office of Federal Contracts Compliance Programs ("OFCCP");
- Most favored customer pricing provisions;
- Trade Agreement Act domestic preference provisions;
- Reporting requirements;
- Mandatory disclosure of fraud, false statements, and significant overpayments; and
- Audit provisions.

Nevertheless, GSA Schedule contracts may provide a special opportunity for asset managers looking to capitalize on contracts issued by the FDIC and other federal agencies finding themselves responsible for these assets.

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