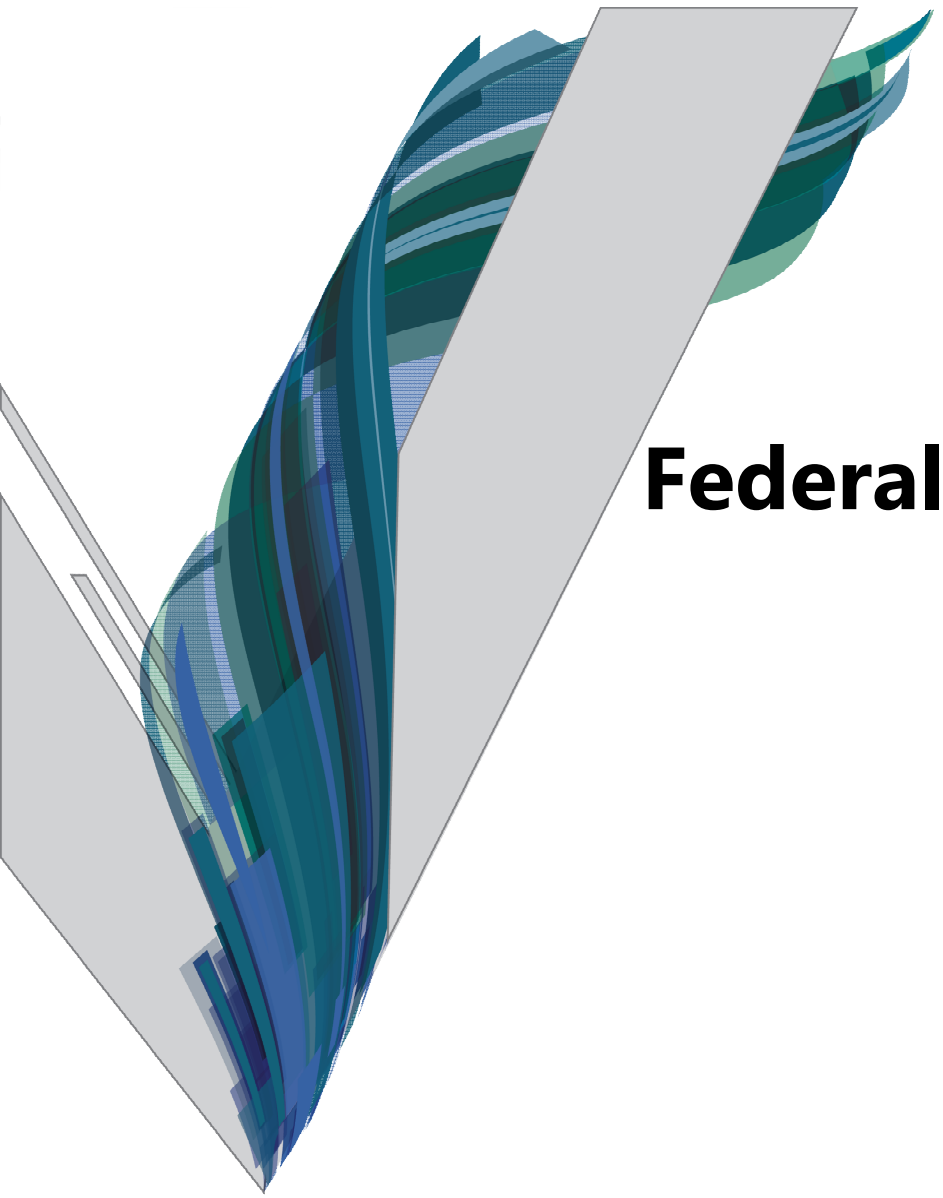

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Federal Supply Schedule Update

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Agenda

- GSA Leadership
- FSS, by the Numbers
- Status of Transactional Data Reporting (TDR)
- OIG Sept. 2016 Report
  - Results
  - Implications
- Other Developments
  - OIG 2017 Report
  - Suspension and Debarment Activity

GSA Leadership

- There has been a bit of a void:
  - Effective Jan. 1, GSA Administrator (Denise Turner Roth) resigns
    - Tim Horne serving as Acting Administrator
  - Effective June 24, two significant resignations:
    - Tom Sharpe, Federal Acquisition Service (FAS) Commissioner
    - Kevin Youel Page, Deputy FAS Commissioner
- Sept. 1 – President nominated Emily Murphy to serve as GSA Administrator
  - Been serving as senior advisor to Acting Administrator Horne

FSS, by the Numbers (FY2016)

- 80% of GSA Schedule Holders are small businesses that represent 36% of sales.
- $31,786,345,753 flowed through GSA Schedules contracts in task orders FY 2016 from Government Procurement.
- In FY16, approximately 10% of all government needs were procured through GSA Schedule contracts.
- GSA had 15,000 MAS contracts total in FY16.
- IT 70 Schedule had a total of $14,747,293,780 in sales overall in FY 2016.
- The Professional Services Schedule (PSS) had a total of $6,496,810,679 in FY 2016.
- The IT GSA Schedule can also be used to sell to all state, local, and tribal governments under the Cooperative Purchasing Program ($379,607,932 in sales to state and local in FY 2016). Same as Schedule 84.
- In a recent GSA Office of Inspector General audit the 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)

- Final rule on TDR issued in June 2016
  - Made TDR mandatory for new GSA Schedule offerors
  - Goal to make mandatory for all
- Aug. 2017, announced that TDR will be voluntary for all
  - Refresh expected this month

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 $221M.
  - Notwithstanding, GSA realized only $93M (43%) of those savings.
- What does this mean in 2017?
  - More pre-award audits as they see a benefit in identifying these savings.
  - Increased pressure to drive pricing down.
- This finding, however, is based on at least two fault 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 percent 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.

OIG 2017 Report

- GSA OIG Report, "Audit of Price Evaluations and Negotiation for the Professional Services Schedule Contract" (Mar. 21, 2017)
  - 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.

Suspension and Debarment Activity

- On September 21, 2017, the U.S. District Court for the District of Columbia issued a decision granting Symplicity founder Ariel Friedler's motion for summary judgment.
- DDC found that Friedler's debarment was arbitrary and capricious and violated the Administrative Procedure Act, because he was not given notice of all bases for debarment.
  - GSA ran afoul of FAR requirements by debarring Friedler based on two new factual grounds not included in the Notice of Proposed Debarment.
  - The *Friedler* court noted that not only were the grounds themselves labeled as "new causes" under the Notice, but that even without that language, such conduct necessarily constituted a new cause because it had not yet occurred at the time the Notice of Proposed Debarment was issued.
  - Furthermore, even if these bases were used only as an aggravating factor to extend the proposed debarment period, notice and an opportunity to respond were still required under 48 C.F.R. § 9.406-4(b) (stating that "the procedures of 9.406-3 shall be followed" to extend the period of a debarment).

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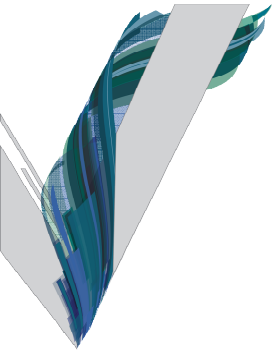

Questions?

Thank You!

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