

# VENABLE<sup>®</sup> LLP

## Government Contractors Toolkit Selling to the Federal Government

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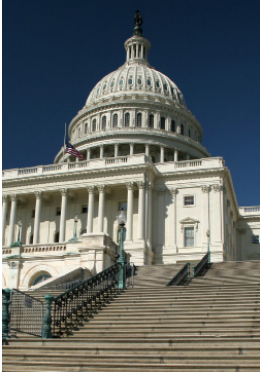
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The United States federal government is the largest consumer of goods and services in the world, with average purchases of more than \$500 billion per year. Companies doing business with the government are in many ways unique, and face a daunting array of laws, regulations and processes that can bewilder even the most experienced government contractors. At the same time, many government contractors operate in the commercial space as well.

Our government contracts team understands the special rules and requirements that affect both aspects of our clients' businesses, and has the skill and experience necessary to guide our clients through any situation that may arise. In addition, Venable attorneys represent a number of small, disadvantaged, women, veteran-owned and HUBZone companies. We assist them in qualifying for such preference status and ensuring that government agencies provide these companies with the contracting opportunities mandated by statute or executive order. We also help protect clients from unfair competition from companies that do not legitimately qualify for preference status.

To assist companies who are attempting to enter the federal marketplace for the first time or are looking to grow their business, we are pleased to provide this reference guide that will be of assistance to new and existing contractors alike.



## FREQUENTLY ASKED QUESTIONS

### FAQ 1: How do I identify opportunities to sell my goods and services to the federal government?

The government has an obligation to provide potential offerors with notice of upcoming procurements. Most procurement opportunities are listed on FedBizOpps. In addition, contractors should use the internet and other available sources to collect and review the wide array of data produced by the government. Specifically, contractors should review the following documents for their specific target agencies: budget rollouts; forecasts of contracting opportunities; and set-aside alerts. Most importantly, however, contractors must understand how a particular agency buys its goods and services. For example, if your company's target agency relies heavily on the General Service Administration ("GSA") Schedules, your companies' marketing strategy should include obtaining a Schedule contract.

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### FAQ 2: What steps, if any, do I need to take before I can sell goods and services to the government?

There are a number of steps that businesses must take prior to being able to sell their goods and services to the federal government. Generally, contractors must first register and receive a DUNS number from Dun and Bradstreet. Second, contractors must register with and complete the applicable representations and certifications within the System for Award Management ("SAM") (formerly the Central Contractor Registration and the Online Representations and Certifications Application sites). For a more thorough explanation of the steps necessary, see our "10 Steps to Becoming a Government Contractor."

### FAQ 3: What does it mean to be a GSA Schedule contractor?

GSA Schedule contracts, also referred to as Federal Supply Schedule ("FSS") or Multiple Award Schedule ("MAS") contracts, are popular government-wide indefinite delivery and indefinite quantity multiple award contracts for commercial products and services. These contracts are unfunded, meaning that they set forth contract terms but do not obligate federal dollars or require performance until a purchase order is issued by a procuring agency. This arrangement affords ordering activities the benefits of shorter lead-times, simplified competition requirements, lower administrative costs, and reduced inventories, while promoting compliance with various environmental and socioeconomic laws and regulations.



### FAQ 4: How do I get on the GSA Schedule?

Becoming a GSA Schedule contractor requires the preparation of a proposal that responds to a specific solicitation. Solicitations are grouped by industry (e.g., IT products and services fall under Schedule 70), therefore contractors must first determine which Schedule is right for them. This will be important as some Schedules have overlapping products and services, but differing terms and conditions. Solicitations generally require, at a minimum, administrative information, certain representations and certifications, a past performance report, a small business subcontracting plan (if applicable), a price proposal, and possibly a technical proposal. Upon submission of a proposal, GSA will review it and follow with negotiations to reach amenable terms with the offeror.

### FAQ 5: Is marketing to the government the same as marketing to my other commercial customers?

No. As discussed more fully below, there are many differences between marketing to the government and your commercial customers. Having said this, there are also numerous similarities.

The primary one being that you need to present yourself to the government as a problem solver, i.e., contractors must convey to their government counterparts that they can make their lives easier and make them look good.

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### FAQ 6: How do I determine if I am a small business?

To determine whether a contractor is a “small” business, contractors should review the North American Industrial Classification (“NAICS”) Codes, which classifies industries and sets various small business size standards for each. A size standard is the “largest” that a business can be (either in terms of average revenue or number of employees over the last three years) and still qualify as a small business for federal government programs.

### FAQ 7: I own a small business. How can I get the government to notice my company?

The first thing a company needs to do is perform its contracts in a complete, timely and professional manner to build up its past performance history. To this end, subcontracting is often the easiest way for many businesses to get their foot in the door and gain valuable, positive past performance. Further, companies must let the government know that they are interested in doing business with the government. Consequently, your company should always respond to the sources sought requests from the government. Companies that are serious about selling to the government treat this document as if it’s an RFP. Finally, contractors should review their data and representations and certifications contained in the System for Award Management (“SAM”) to ensure it identifies the correct NAICS code for their business and includes key words that clearly identify what their business does.



### FAQ 8: How, as a small business, can I market to federal prime contractors?

Similar to the federal government, large businesses must also strive to meet small business utilization goals. As a result, a number of agencies host small business contractor lists and websites where prime contractors can obtain information on potential small business partners. Some of these include the Dynamic Small Business Search; the Small Business Administration's Subcontracting Network (SUB-Net); the small business source listings available on GSA's Multiple Award Schedule; and the Department of Veterans Affairs and Center for Veterans Enterprise (VetBiz).

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### FAQ 9: The procurement cycle seems to take a long time. Are there any steps that I can take to develop opportunities for business more quickly?

Yes. There are steps that your company can take. The first and perhaps easiest is to get your company on the GSA Schedule. It is relatively easy to get on a Schedule, and many times we can assist a company to get on the Schedule for a fixed price.

### FAQ 10: Does the government assist contractors in marketing their products and services?

Yes, in particular, GSA vigorously markets its Schedule program and its contractors. In fact, GSA holds an annual Expo each year to bring its Schedule contract holders and federal agencies together to review and discuss available products and services on the GSA Schedule. Similarly, agency small business offices are there to assist companies in obtaining both prime and subcontracts.





### 10 STEPS TO BECOMING A GOVERNMENT CONTRACTOR

When a company decides it wants to become a government contractor and begin selling goods or services to the federal government, the initial steps can be divided into two categories: administrative and educational. The first category references the administrative or clerical actions required for a potential contractor to compete for federal contracts. The second category lists the steps needed to identify relevant contracting opportunities and to effectively market to the world's largest purchaser of goods and services – the U.S. government.

#### Administrative Steps

- 1 Find the appropriate NAICS classification for your industry, as it is a key to identifying relevant contracting opportunities. [www.census.gov/eos/www/naics](http://www.census.gov/eos/www/naics)
- 2 Register and receive a DUNS number from Dun & Bradstreet. [www.dnb.com/us](http://www.dnb.com/us)
- 3 Register as a government contractor and complete certain applicable representations and certifications with the System for Award Management (“SAM”) site (formerly the Central Contractor Registration and Online Representations and Certifications Application). <https://www.sam.gov/portal/public/SAM/>
- 4 Determine if your business is eligible under any of the Small Business Administration's small business size standards or otherwise qualifies for preferential treatment in seeking federal contracts. <http://www.sba.gov/category/navigation-structure/contracting/contracting-support-small-businesses>

#### Educational Steps

- 5 Search for current federal government procurement opportunities at FedBizOpps. <https://www.fbo.gov>
- 6 Develop a marketing strategy for targeted civilian and defense agencies.
- 7 Familiarize your company with the budget forecasts for your targeted agencies. [www.acquisition.gov/comp/procurement\\_forecasts/index.html](http://www.acquisition.gov/comp/procurement_forecasts/index.html)
- 8 Investigate whether your products or services are eligible for listing on the GSA Schedules or other government-wide acquisition contracting vehicles, and investigate subcontracting opportunities.
- 9 Study and seek the advice of professionals concerning the growing number of legal and regulatory requirements that apply to government contractors. There are several public resources available for this purpose, such as [www.acquisition.gov](http://www.acquisition.gov).

Once the above steps are accomplished, selling to the government is like selling to any other customer. Companies need to develop targeted marketing strategies and strong business relationships with the agencies, and build a good reputation through successful contract performance. In addition to these traditional practices, companies should also develop and implement processes and practices that ensure compliance with government-specific requirements and regulations.



## THE RULES OF THE ROAD

In the commercial sector, companies frequently provide gifts or meals to their customers to build and strengthen their business relationship and, hopefully, garner additional work. While relationships with the government customer are important as well, the tools at your disposal to build these relationships are dramatically different. As a general matter, government regulations prohibit government employees from soliciting or accepting gifts from a prohibited source or that are offered because of the employee's official position. They also prohibit contractors from using appropriated funds to lobby government agencies or Congress in connection with specific contract opportunities, as well as limit the payment of commissions or success fees.

## LIMITATIONS ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

Generally, contractors are prohibited from using appropriated funds to lobby government agencies or Congress regarding a pending solicitation. This restriction does not apply, however, to communications regarding the contractor's products or services or whether the agency should initiate a particular procurement. Likewise, it does not apply to compensation for services provided directly in the preparation, submission or negotiation of a bid. Nevertheless, due to the potential gray areas that arise during the procurement cycle, contractors should consult with counsel to ensure compliance with this law.

## LIMITATIONS ON GIFTS

**Gift:** any gratuity, favor, entertainment, training, travel, meal, or other item having any monetary value. Gifts to a government employee's immediate family are imputed to the employee.

**Prohibited Source:** any person or entity that is seeking official action by the employee's agency, does or seeks to do business with the employee's agency, or may be otherwise affected by the government employee's performance of her or his duties.

### Exemptions:

- Items worth  $\leq$  \$20
- Modest refreshments
- Widely attended gatherings/speaking events
- Social relationships
- Publicly available discounts
- Honorary degrees and awards



### COVENANT AGAINST CONTINGENT FEES

Contingent fees, defined as any payments conditioned upon the success an entity has in securing a government contract, are prohibited by law in negotiated contracts and by regulation in sealed bid procurements. Contractors must warrant that no agent or employee has been engaged to obtain a contract for a contingent fee. Despite this broad ban, exceptions exist for a bona fide employee and bona fide agency.

“Bona fide employee” means a person employed by the contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain any government contract(s).

“Bona fide agency” means an established commercial or selling agency, maintained by a contractor for the purposes of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain any government contract(s).

### PROTECTING YOUR COMPANY FROM MARKETING MISCUES:

- Conduct a gap analysis of your compliance program;
- Ensure that the contractor’s internal policies follow the federal statutes and regulations regarding the above limitations;
- Review and monitor the activities of the company’s business developers;
- Train all workers engaged in business development activities concerning the above limitations;
- Require that contractor employees who work at government locations understand how the rules apply to their interactions with government employees;
- Accurately track costs associated with these activities;
- Require reporting of solicitations of gifts by government officials; and
- Ensure that consultants agree to adhere to the same standards as your employees.



## GOVERNMENT CONTRACTOR RESOURCES

### FINDING PROCUREMENT OPPORTUNITIES

Fed Market  
[www.fedmarket.com](http://www.fedmarket.com)

FedBizOps  
[www.fedbizopps.gov](http://www.fedbizopps.gov)

Acquisition Central  
[www.acquisition.gov](http://www.acquisition.gov)

GovSales  
[www.govsales.gov](http://www.govsales.gov)

E-Pipeline  
[www.epipeline.com](http://www.epipeline.com)

### POSTING INFORMATION FOR PARTNERING WITH LARGE PRIME FEDERAL CONTRACTORS

Dynamic Small Business Search  
<http://dsbs.sba.gov/dsbs>

SUB-Net  
<http://web.sba.gov/subnet>

GSA's small business source listings  
[www.gsa.gov](http://www.gsa.gov)

VetBiz  
[www.vetbiz.gov](http://www.vetbiz.gov)

### TRACKING CONTRACT INITIATIVES

GovCon  
[www.govcon.com](http://www.govcon.com)

GovSales  
[www.govsales.gov](http://www.govsales.gov)

Acquisition Initiatives  
[www.acq.osd.mil/dpap](http://www.acq.osd.mil/dpap) (Defense Dept. only)

Acquisition Central  
[www.acquisition.gov](http://www.acquisition.gov)

Dept. of Education  
[www.ed.gov/fund/contract/find/forecast.html](http://www.ed.gov/fund/contract/find/forecast.html)

GovExec  
<http://www.govexec.com/>

### OTHER INFORMATIONAL RESOURCES

Procurement Reference  
<http://ec.msfc.nasa.gov/msfc/procref.html>

FAR  
[www.acquisition.gov/FAR](http://www.acquisition.gov/FAR)

GSA  
[www.gsa.gov](http://www.gsa.gov)

FedSpending  
[www.fedspending.org](http://www.fedspending.org)

System for Award Management  
<https://www.sam.gov/portal/public/SAM/>

Fed Procurement Data  
[www.fpds.gov](http://www.fpds.gov)

Small Business Administration  
[www.sba.gov](http://www.sba.gov)

For a detailed discussion of these and a host of other government contract issues, please visit our website at [www.Venable.com/government-contracts](http://www.Venable.com/government-contracts).