

# Top 10 Compliance Risks For GSA Schedule Contractors

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# Agenda

1. Commercial (MFC / BOA) Pricing Compliance
2. GSA Pricing Compliance
3. GSA Terms and Conditions
4. Business Size and Type Representation
5. Trade Agreements Act
6. Ethics and Business Conduct
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# Federal Contracting: Risks and Rewards!



# Commercial (MFC / BOA) Pricing Compliance

## OVERVIEW

### Price Reductions Clause 552.238-75

- Prior to contract award, GSA and contractor will agree on the customer or category of customers which will be the Basis of Award and GSA's price or discount relationship to the identified customer(s).
- This relationship shall be maintained throughout the contract period. Any change to the Contractor's commercial pricing or discount arrangement applicable to the identified BOA customer(s) which disturbs the relationship constitutes a price reduction.





# Commercial (MFC / BOA) Pricing Compliance

## COMMON ISSUES

- No communication or training to employees regarding GSA's pricing requirement. Did not update sales policies or workflow rules.
- GSA contractors need a system in place to monitor the Basis of Award customer discount relationship
- Did the GSA contractor offer a better price, discount or concession to a Basis of Award customer that disturbs the defined discount relationship?



# Commercial (MFC / BOA) Pricing Compliance

## RECOMMENDATIONS

- Conduct corporate wide training on GSA pricing compliance. Distribute materials, pricing policies, or workflow rules for reference.
- Establish and enforce a pricing “floor”.
- Regular review of sales transactions to ensure compliance. Don’t forget to review “concessions”.
  - Concessions are a benefit, enhancement or privilege (other than a discount), which either reduces the overall cost of a customer’s acquisition or encourages a customer to consummate a purchase. Concessions include, but are not limited to freight allowance, extended warranty, extended price guarantees, free installation and bonus goods.



# GSA Pricing Compliance

## OVERVIEW

- GSA Contractors can only sell to GSA “Eligible Entities” at the approved GSA price or lower.
- Schedule 70 (IT) and 84 (Security) include Cooperative Purchasing Amendment, which allows state, local, public school systems, and tribal governments to purchase from GSA contractor.
- GSA Contractors need to demonstrate compliance with the scope of their Schedule and awarded SINs



# GSA Pricing Compliance

## COMMON ISSUES

- No communication or training to employees regarding GSA Eligible Entities or awarded GSA pricing.
- Contractors are putting their GSA contract number on quotes and invoices without understanding contract scope and awarded GSA pricing.
- GSA and non-GSA items are being mistakenly grouped together within the quote and invoice. Quarterly 72a reports are inaccurate.





# GSA Pricing Compliance

## RECOMMENDATIONS

- Download and distribute “Eligibility to use GSA Sources of Supply and Services”.  
<http://www.gsa.gov/portal/content/104212>
- Ensure all GSA quotes and proposals are approved by your GSA Pricing Desk. Review invoicing process to ensure correct representation and clear delineation.
- Self audit records to ensure quarterly 72a sales reports are accurate and compare against how your GSA buyers are reporting the contract action. [www.FFATA.org](http://www.FFATA.org)



# GSA Terms and Conditions

## OVERVIEW

GSA Terms and Conditions are unique to your GSA contract and can be different from your commercial business. They can include:

- Minimum Order
- Quantity and Volume Pricing
- Payment Terms and Invoicing
- Delivery Cost and Delivery Schedule
- Warranty / Restocking / Return Policies
- Installation / Maintenance
- Labor Qualifications
- Subcontracting Restrictions



# GSA Terms and Conditions

## COMMON ISSUES

- GSA terms and conditions are not accurately represented and supported.
- GSA Contractors don't train and communicate differences to employees.
- Prompt Payment Term is not being shown on the invoice.



# GSA Terms and Conditions

## RECOMMENDATIONS

- Conduct corporate wide training on GSA pricing compliance. Distribute materials for reference. Self audit proposals and invoices.
- Understand fundamental differences in Terms / Conditions:
  - Commercial Delivery may be FOB Origin, OCONUS, 30 Days ARO.
  - GSA Delivery may be FOB Destination, 48 CONUS and Washington DC, 15 Days ARO (and require a MSDS).
  - Commercial Payment Schedule may be Net 30, in advance
  - GSA Payment Schedule may be 1% 15 Days, Net 30, in arrears after “Inspection and Acceptance.”



# Business Size and Status Representation

## OVERVIEW

- The SBA typically defines a “U.S. small business” either in terms of the average number of employees over the past 12 months, or average annual receipts over the past three years. The business entity should be organized for profit with a place of business located in the United States and which makes a significant contribution to the U.S. economy.
- The North American Industry Classification System (NAICS) identifies a business by category /capability. The government will always identify a NAICS code and size standard with each acquisition. Under that assigned NAICS code, you are required to represent your business size and type at the time of proposal submission.
- Contracts may also be set aside for small businesses with certain **status**, such as Small -Disadvantaged, Women Owned, Veteran Owned, HubZone and others.





# Business Size and Type Representation

## COMMON ISSUES

- Failure to properly calculate revenue leading to miscertification
- Failure to count part time employees against employee limits
- Failure to recognize transactions that are likely to create affiliation
- Belief that spin-offs and family connected entities will qualify as small
- Failure to comply with the new limitation on subcontracting rules
- Failure to act within the 5 day size protest window when a competitor receives award
- Failure to understand the rules on status designations



# Business Size and Type Representation

## RECOMMENDATIONS

- Small business contractors must proactively audit their eligibility to bid as a small business and review their employee levels and revenue numbers against the applicable NAICS codes. They should also examine status representations and whether they may have inadvertently become affiliated with another entity.
- Large business contractors must verify the size and/or status claims of firms with whom they contract, team with on set aside work, or seek to acquire, and verify limitation on subcontracting compliance.
- Any time a contractor seeks and obtains a federal contract or subcontract through willful misrepresentation of its small business size/status, there is a presumption of loss to the government equal to the value of that contract or subcontract.



# Trade Agreements Act

## OVERVIEW

- Products under GSA schedules are typically subject to the Trade Agreements Act (“TAA”). Under the TAA, the U.S. Government may purchase products only if those products are wholly the growth, product, or manufacture of the United States or another “designated country,” or have been “substantially transformed” in the United States or another “designated country.”
- Several countries are not “designated countries,” such as China, India, Malaysia, Russia, and Thailand.
- You must list a Country of Origin (COO) for each product offered under your GSA contract.



# Trade Agreements Act

## COMMON ISSUES

- Contractors do not obtain, and periodically refresh conforming letters of supply from manufacturers
- Contractors fail to include appropriate indemnities in their supply contracts with the manufacturers
- Contractors do not audit their products and fail to spot check, and maintain updated data bases for product origin information
- Contractors have not done a “year back” spot check audit to identify risks or exposures that need immediate attention
- Failure to appreciate legal exposure for non-compliance
- Contractors are mislead by ambiguous origin representations
- Failure to timely remove unverified items from your contract



# Trade Agreements Act

## RECOMMENDATIONS

- Follow best practices administration of Trade Agreements Act compliance by auditing for common lapses described in Slide 17.
- No TAA Audit?
- Sharply increase Officer and Directors E&O coverage, and update your LinkedIn profile





# Ethics and Business Conduct

## OVERVIEW

- Government contractors must conduct themselves with the highest degree of integrity and honesty.
- GSA contractors are required to exercise due diligence to prevent and detect criminal conduct and promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.
- All federal contractors should have an updated written code of business ethics and conduct, specific to government contracting, and train each employee engaged in performance of a federal government contract.



# Ethics and Business Conduct

## COMMON ISSUES

- Contractors have not updated Codes to cover the Mandatory Disclosure Rule
- Mistaken belief that “generic” corporate ethics codes are sufficient for federal contracting
- Training is not regularly conducted, or if conducted, not documented
- Contractors do not address disciplinary actions for violations



# Ethics and Business Conduct

## RECOMMENDATIONS

- Update and maintain your government Code of Ethics
- Adjust your organizational structure to insure trained personnel are assigned to key compliance positions
- Do a blind test to see how your system handles an issue
- Ask your counterparties about their Codes of Ethics (It takes 2 to Tango)
- Conduct training and document. Make it part of the corporate culture.



# Human Resource Requirements

## OVERVIEW

A GSA Contractor can have a number of compliance requirements associated with recruitment, minimum compensation, and employment. Some of which include:

- VETS 100
- EEO - 1
- Affirmative Action Program (AAP)
- Disability Employment
- E-Verify
- Service Contract Act
- Davis-Bacon Act
- Labor Category Minimum Qualifications



# Human Resource Requirements

## COMMON ISSUES

- GSA Contractors are held to a higher standard. Since there is a culture shift from normal commercial business, they don't understand and follow applicable federal employment laws and reporting obligations. Know the requirement thresholds.
- GSA Contractors are unprepared for DOL Desk Audits.
- Individual's resume and previous work experience does not meet defined labor category qualifications.
- Contractors didn't realize Service Contract Act was applicable and are liable for past compensation.





# Human Resource Requirements

## RECOMMENDATIONS

- Research and review contract requirements as they relate to recruitment, minimum compensation, and employment. Begin by reaching out to DOL's Office of Federal Contract Compliance Programs:  
[www.dol.gov/ofccp](http://www.dol.gov/ofccp)
- Compare resumes for individuals against the minimum qualifications defined for their labor category. Don't forget to review your subcontractors!
- If you believe you offer non-professional labor, be prepared for Service Contract Act by mapping your job categories to the Directory of Occupations and appropriate Wage Determination area.



# Small Business Subcontracting Plan

## OVERVIEW

Government contractors, who are not a small business, that receive a contract for more than the simplified acquisition threshold (\$150,000) must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance.



# Small Business Subcontracting Plan

## COMMON ISSUES

- The subcontracting plan requires contractors to solicit written self-certifications of their subcontractors regarding their business size and status. If you do not have a self-certification on file, you must count the subcontractor as a Large business. 13 CFR 121.411(a)
- Non-profit organizations should not be classified as a Small Business.
- GSA Contractors unaware of differences between Commercial and Individual plans and if Indirect Costs are included in goals.
- CEO does not sign the ISR and/or SSR reports.



# Small Business Subcontracting Plan

## RECOMMENDATIONS

- Ensure self-certification forms have the required content and SB misrepresentation disclosure. 15 U.S.C. § 645
- Ensure a completed self-certification from each direct subcontractor, and from vendors / suppliers if Indirect Costs are included.
- A SBA Compliance Review (audit) will stress the importance of a compliance program. They will interview employees, review written policies and subcontract justification sheet, and evaluate corporate culture and outreach efforts.



# GSA's Contractor Assistance Visit

## OVERVIEW

GSA's Industrial Operations Analyst (IOA) will conduct a Contractor Assistance Visit (CAV), two times within every five year contract term. The objective of the meeting is to assess the level of compliance. Topics included are:

- Sales Reporting Tracking System
- GSA Pricing and GSA Advantage
- Scope of Contract
- Trade Agreement Acts Compliance
- Basis of Award Customer and Discount Relationship
- Administrative Accuracy





# GSA's Contractor Assistance Visit

## COMMON ISSUES

- GSA Contractors do not adequately prepare for the CAV meeting. **Make no mistake - this is an Audit!**
- Don't make the same mistakes. Learn from past CAV meetings and ensure previous issues are resolved.
- If you provide the IOA confidential or proprietary information, GSA Contractors do not submit with a non-disclosure statement.
  - Privileged and confidential under 5 U.S.C. § 552(b)(4)



# GSA's Contractor Assistance Visit

## RECOMMENDATIONS

- Spend enough time to get organized (hard copies and electronic copies) and ensure staff is available.
- Review GSA IOA Report Card and prepare before CAV meeting. <https://vsc.gsa.gov/reportcard/>
- If there are outstanding items after the meeting, give them high priority and follow up with your Contracting Officer with any questions.
- Request completed IOA copy of your Report Card.



# The Mandatory Disclosure Rule

## OVERVIEW

Federal Contractors are now required to self-disclose credible evidence of certain violations of law and overpayments in connection with the award or performance of a federal contract or subcontract. Failure to disclose credible evidence is grounds for automatic Suspension or Debarment.

*The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed —*

- (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
- (B) A violation of the civil False Claims Act (31 U.S.C. [§§] 3729-3733).



# The Mandatory Disclosure Rule

## COMMON ISSUES

- Contractors have not updated their Codes of Ethics to capture the MDR
- Contractors do not have systems to recognize when a potential disclosable event has occurred
- When actionable information is received, contractors do not promptly investigate the circumstances
- Contractors fail to do self audits to ascertain whether current practices are creating legal exposure
- Contractors report issues to the wrong personnel, believing that they satisfied the MDR



# The Mandatory Disclosure Rule

## RECOMMENDATIONS

- Determine if Ethics Code includes Mandatory Disclosure Rule
- Assess if your organization has the capabilities to detect and recognize a MDR issue if an event occurs
- Do a blind test of your compliance systems to see how an issue is handled
- Follow best practices administration of Mandatory Disclosure Rule by auditing for common lapses described in Slide 32
- If you have questions on “credible evidence”, seek professional help. There is too much at risk!



# Questions

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