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The Seven Deadly Sins: GSA Schedule contractors find that contract compliance is not as easy as they thought

By Peter E. O'Neill, III, Director, Aronson & Company

Audits, court cases, huge financial settlements...these are popular GSA headlines in today's news. What's going on? GSA Schedule contracts are a streamlined way for the government to buy, but how streamlined is contract compliance?

During government fiscal year 2006 the General Services Administration (GSA) Office of Inspector General (OIG) performed approximately 70 pre- and post-award audits of GSA Schedule contractors. While many of these audits are still ongoing, some have resulted in huge financial settlements, delays in contract renewals and cancellation of contracts.

What is leading this increased activity by the GSA OIG? Lack of contract understanding and compliance by GSA Schedule contractors.

Most contract holders think GSA Schedule contract compliance is simple ... post your pricelist and submit your Industrial Funding Fee quarterly and you are in compliance. If only it was that easy. In today's GSA contracting environment there is a growing number of compliance issues that must be addressed. The "Seven Deadly Sins" are:

1. Inadequate contract files and outdated contract administrator

Frequently, GSA Schedule contract files are nonexistent or woefully inadequate. Comprehensive contract files should contain the original proposal, proposal clarifications prior to award, Final Proposal Revision (FPR) documenting negotiations, signed SF1449 award document and copies of all contract modifications.

Typically, people involved in the award of the contract are long gone, the person administering the contract has changed several times and the original proposal and award documentation are nowhere to be found. The key to fully understanding and administering this contract hinges on locating these documents.

The importance of the contract administrator is another grossly underrated function. GSA communicates primarily with the Contract Administrator, frequently by email. Contract updates and modifications are often done online and sent to the identified GSA Schedule Contract Administrator. Failure to update the contract administration point of contact may result in missing deadlines and important contract changes. Not accepting mandatory modifications may result in contract cancellation. If the GSA Schedule Contract Administrator leaves, the contract must be modified. Simplify this transition by creating a generic e-mail account (e.g., gsacontracts@companyname.com) that can be monitored by more than one person.

2. Failure to understand "Basis of Award" discounting relationship and how the Price Reductions Clause impacts sales to other customers

Every GSA contractor needs to be familiar with the "Basis of Award" discounting relationship negotiated with GSA. Most contractors fail to understand this critical element, subjecting themselves to potential financial risk.

Where is the "Basis of Award" discounting relationship documented? It may not always be easy to find. The first place to look is the Final Proposal Revision or SF1449. If this relationship is not clearly defined, contact the Contracting Officer for clarification. After the discounting relationship is understood, develop policies and procedures to monitor for price reductions.

Starting in 2007, routine Industrial Funding Fee (IFF) compliance visits by Industrial Operations Analysts will require contractors to identify their contract "Basis of Award" discounting relationship. If the contractor is unable to identify this relationship, an unsuccessful report card will be issued.

3. Inadequate disclosure of "commercial" pricing practices during the original negotiations and throughout the life of the contract

In the GSA contract proposal "Commercial Sales Practices-1" (CSP-1), contractors are required to disclose and document all discounting policies and pricing practices. These practices must be updated throughout the life of the contract whenever a modification is requested.

Audit findings indicate that contractors often do not fully disclose pricing practices for all customers, resulting in defective pricing questions and an expansion of the scope of audit.

4. Failure to apply/disclose additional discounts

During contract negotiations, contracting officers may negotiate additional discounts such as:

1. prompt payment discount
2. dollar volume discount on orders over a specified dollar (\$) threshold
3. discount for individual items over a specified quantity

Contractors with negotiated prompt payment discounts must reflect the prompt payment discount terms on invoices for GSA orders. Auditors want to see that contractors have alerted ordering agencies about the availability of the discount.

For contractors with negotiated dollar (\$) quantity discounts, all quotes and invoices must clearly show the discount being applied to the total of GSA Schedule items, whereas quantity discounts are applied to individual items. Most contractors do not have

procedures in place to address these types of discounts. Developing an automated process will minimize the risk of potential fines or penalties.

5. Open Market Items

Responding to a Request for Proposal (RFP) may involve using non-Schedule, open market items. These open market items are receiving higher scrutiny during compliance reviews. To handle properly:

1. Clearly classify GSA and non-GSA items in all bids and invoices.
2. Consider Contractor Teaming Agreements with other GSA Schedule holders to provide a comprehensive in-scope solution.
3. If the proportion of open market items to GSA Schedule items seems excessive, contact the contracting officer for clarification.

6. Providing under-qualified personnel

Personnel working on GSA orders must meet the minimum education and experience requirements for the GSA contract labor category in which billed. Agency Contracting Officers CANNOT overrule the GSA negotiated labor category requirements. To ensure compliance, maintain updated resumes reflecting current education, expertise and certifications. Adding education/experience substitutions increases the flexibility of the contract.

7. Ignoring the Trade Agreements Act (TAA)

The government is actively enforcing the TAA through periodic audits. The GSA OIG has issued over 40 administrative subpoenas to GSA Schedule contractors for TAA related information. Since manufacturers frequently change production points, it is difficult to determine if a product is in compliance. Setting up policies and procedures to monitor this issue is the only way contractors can succeed. Typical procedures include:

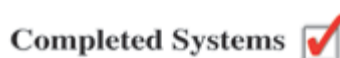
1. Annually updating Letters of Supply from manufacturers.
2. Requiring manufacturers to update resellers anytime a production point changes.
3. Spot checking products in warehouse for country of origin.

Contractors cannot afford to dismiss GSA contract compliance issues in today's audit-ridden environment, and implementing policies and procedures that address the "Seven Deadly Sins" will minimize financial risk. GSA contract sales typically represent a large percentage of government sales and would greatly affect the bottom line if the contract was canceled or dollar penalties assessed.

Can your organization survive the loss of this contract or the financial risk exposure? For more information about Aronson & Company's GSA contract compliance services, contact Pete O'Neill at 301.222.8226 or by email at poneill@aronsoncompany.com.

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