

The Dangers of the GSA Schedule Autopilot Mode: Why the CA Technologies \$45M settlement should serve as a compliance reminder

By Scott M. Davidson CPT. USA, Ret. Scott.davidson@govconops.com

Earlier in the week CA Technologies had agreed to pay \$45 million to settle charges initiated under a whistleblower lawsuit that it provided **false information about pricing policies to a federal agency**, the Department of Justice announced. The settlement resolved charges that CA did not disclose the discounting policies it uses with commercial clients when it was negotiating a contract in 2002 with the federal General Services Administration which resulted in the trigger of the Price Reduction Clause in the GSA Schedule. That contract was extended in 2007 and 2009. Under the settlement announced Friday, CA did not admit liability.

“This case illustrates that we will vigorously pursue federal contractors who fail to negotiate and perform their obligations with transparency and fairness,” U.S. Attorney for the District of Columbia Channing D. Phillips said in a statement.

If you couple this headline with the recent GSA Office of the Inspector General Findings report published on 9/19/2016 there is a potentially troubling pattern of noncompliance that may be prevalent among GSA Schedule holders.

According to the published OIG report GSA Schedule Contractors’ Commercial Sales Practice (CSP) disclosures are not consistently providing sufficient GSA and commercial sales information needed to

obtain fair and reasonable pricing. During the review a total of 79 Percent of audited contractors in FY 2014 submitted inaccurate CSP information to GSA for the Basis of Award of their contract. If the vendor's CSP disclosures is not correct at the start of the contract then it would be impossible to accurately track and monitor your Basis of Award (BOA) customer and the requirements listed under the Price Reduction clause.

Business as Usual:

In most cases GSA Schedule holders, do not know the correct pricing structure that has been proposed and awarded under their GSA Schedule and **more importantly these schedule holders are reaffirming the same pricing structure each time an option renewal is required by GSA.** This results in the **auto pilot mode** with regards to GSA Schedule compliance and can **eventually lead to serious noncompliance** issues with the schedule which can result in significant civil or criminal penalties in some cases.

Business as usual is not a reality when grow and maintain a business. The reality is that vendors will simply change the way they do business over the years in order to change and meet the market demand and or growth or losing market segment. These changes could result in the changes of commercial sales practices (e.g. discounting like services to penetrate a commercial market). It is more of an anomaly if you are following the same commercial sales practices and pricing structure you did 15 or 10 years ago. But time and time again when I review a client's renewal documents the client reaffirms each time that nothing has

changed. However, in most cases when the GSA Schedule is reviewed through an internal audit by a responsible party you generally find that the original schedule was awarded on incorrect information and it was consistently reaffirmed over the years.

False Sense of Security:

Most clients will also point to the fact that they **pass their GSA Assessment Visits** without any compliance issues and don't understand why there is a problem. **Assessment visits will provide only a snapshot** of the current state of the contract as compared to what is examined with regards to an OIG audit. Most assessments visits are rushed because of heavy workload of the IOA and in specific cases I seen glaring compliance issues simply thumbed over only to be then disclosed to the GSA OIG through the mandatory disclosure rule. This highlights the fact that the GSA Schedule is responsible for maintaining the compliance of the GSA Schedule and not GSA.

The bottom line is that the GSA Schedule is a great acquisition tool for the companies that have been awarded them. **But there are compliance requirements that must be followed as with any contract.** A strong internal controls system, GSA Schedule vehicle knowledge, and a proactive approach to compliance can mitigate a great amount of the risk associated with the vehicle. In the CA case the complaint originated externally from the company so for GSA schedule holders you never know where the potential risk is coming from but if you are prepared for it with a strong compliance plan then the risk may never have the opportunity present itself. But with the nearly 80 percent of the GSA

Schedule vendors not providing correct baseline commercial sales information to the GSA people vendors should be looking over their shoulder.

If you have any questions related to this article or the GSA Schedule please email Scott.Davidson@govconops.com at the GCO Consulting Group