

GSA AUDITS

By Andrew Mohr and Kelly Kroll

All General Services Administration ("GSA") Multiple Award Schedule solicitations contain provisions that provide GSA with certain rights to access and audit a contractor's records. These provisions are usually invoked in three types of scenarios: pre-award audits, post-award audits, and the friendly sounding, but often dreaded, Contractor Assistance Visits ("CAV's"). Pre-award audits rarely occur prior to the award of a vendor's initial GSA Schedule contract; instead, a pre-award audit is much more likely to be conducted in the context of the renewal of a contractor's GSA Schedule contract for an additional five year period. Post-awards, which in the 90's and early 00's were rarely conducted, have seen a renewed popularity with the folks at GSA. CAV's are conducted as a regular course of business and every GSA Schedule contractor should expect one at least every year or so.

GSA's pre-award audit rights stem from FAR Clause 52.215-20, which grants GSA or any duly authorized representative the right to examine, at any time before initial award, all "pertinent records to verify the pricing, sales and other data related to the supplies or services proposed in order to determine the reasonableness of price(s)." Importantly, since GSA Schedules are for commercial items, GSA's pre-award audit rights do not extend to cost or profit information. GSA's goal in a pre-award audit is to insure that the information set forth in the Commercial Sales Practices section of their proposal is current, accurate and complete. Any omissions or errors found during this type of audit will delay the award (either the initial award or renewal award) and often times will be used as a lever by GSA to obtain lower pricing from the contractor. Annoyingly, GSA will often not provide a copy of the pre-award audit report to the contractor, claiming that it is a confidential to GSA's negotiations. Instead, GSA will flash

pages or quote from the pre-award audit report to support its negotiating position, but not let the contractor review the audit report to see if it is based on GSA's misunderstanding of the contractor's sales practices.

GSA's post-award audit rights and CAV access rights stem from GSAR Clause 552.215-71, which allows GSA or any duly authorized representative the right to access all records related to the GSA Schedule contract during the period of performance and for three years after final payment. The base five-year period of the GSA Schedule and each subsequent five-year option period are treated as separate contracts for this purpose. The goal of a post-award audit is to identify any overbillings or billing errors and also to ensure that the contractor has complied with the Price Reduction and Industrial Funding Fee ("IFF") clauses of the contract. The Price Reduction clause, in short, is how GSA ensures that it continues to receive fair and reasonable pricing in comparison to the contractor's commercial customers. In general, under this clause, a reduction in pricing to a contractor's commercial pricelists or basis of award customers requires a corresponding discount to GSA. The Industrial Funding Fee is a .75% user fee that is collected by the contractor from user agencies and passed back to GSA as compensation for awarding the GSA Schedule contract. Problems identified in these types of audits can result in refunds, penalties, fines or in worst case scenarios, jail time.

The CAV scope is less broad. The goal there is to make sure the contractor is complying with a wide-range of compliance requirements, but with much of the emphasis on the collection and timely remittance of the IFF. The IFF is how GSA funds itself, so it is understandable why GSA is eager to conduct these types of inspections. Usually, errors discovered during this type of review are dealt with by a slap on the wrist and a bad report card. We're kidding about the

wrist slap, but not the bad report card. GSA issues reports cards after each CAV, and failure to resolve a bad report card can result in contract termination.

So now you know what types of audits you face as a GSA Schedule contractor but how do you respond when you get notice that GSA auditors are on their way? Two words -- controlled response. Audits and even CAV's are serious matters and should be treated as such. Too much is at stake not to. All too often, a contractor receives a document request from GSA auditors and immediately rushes to provide the documents by the deadline established unilaterally by GSA. In the process, the contractor sometimes turns over information that has no rational relation to the scope of the audit's purpose or even within the scope of the auditor's request, and then doesn't keep an accurate record of what was provided to GSA. Worse yet are contractors that don't respond at all.

The proper course of action when contacted by GSA regarding any type of audit is to first get the request in writing. Even requests to perform a CAV should be made in writing. The written request should itemize the documents to be reviewed and identify the relevant time period. The documents should be then gathered in a diligent and timely manner, but a contractor does not need to meet with GSA representatives at their whim and can ask to reschedule visits or extend deadlines that are unreasonable. CAV auditors are famous for sending emails to contractors informing them that the auditor will be at their office next Tuesday at 10 a.m. for a four hour visit.

With respect to pre-award and post-award audits, it is often advisable to seek legal counsel. A lawyer can review the request and determine whether or not the request is within the scope of GSA's audit rights, pushing back on those requests that are not within that scope. Legal counsel can also serve as the central point of contact with the auditors and with all contractor

personnel that are tasked with responding to the document requests. An attorney will review all materials and produce all responsive documents in an organized fashion.

But don't wait for an audit request to get ready for one. All GSA Schedule contractors should have contract compliance programs in place. This includes (but isn't limited to) record retention plans, price reduction reviews, and IFF system and tracking programs. If a GSA Schedule contractor waits until it gets an audit notice to organize its files and operations, it's probably too late. A GSA Schedule contractor that is sufficiently aware of its obligations and is adequately organized with a compliance program in place has a good chance of passing an audit without a glitch.

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