



General Services Administration (GSA) Schedule Services

GOVERNMENT CONTRACT REGULATORY COMPLIANCE

Overview

To consolidate the “commercial” purchasing activities of federal agencies, the U.S. Government formed the General Services Administration (“GSA”) in 1949, thereby incorporating functions previously conducted by various procurement programs. By utilizing one source for procurement, the burden of contract negotiation and order processing was lifted from federal agencies, allowing them to focus on their core operations. While the GSA administers many programs through which goods and services are procured for federal agencies, the most often used contract vehicles are Multiple Award Schedules (“MAS”), also referred to as GSA Schedules or Federal Supply Schedules. As such, admittance to selling goods and services on the schedules is highly sought after by commercial companies that may not traditionally conduct business with the federal government.

MAS are based on negotiated contracts that are established with more than one supplier for comparable commercial goods or services. Prices are based on discounts from commercial pricelists, and contracts are awarded only after a contracting officer has determined that the prices, terms, and conditions offered are fair and reasonable. This determination is reached through a price evaluation, which may include a pre-award audit.

Risks of GSA Contracting

While the federal market may appear attractive to companies due to the large opportunities it presents, contractors (and potential contractors) must recognize that it is a highly regulated market and carries significant risk, particularly for those not familiar with the compliance requirements of selling to the U.S. Government. In particular, many companies unfamiliar with the monitoring requirements set forth in the Price Reductions Clause, or the disclosure requirements necessary to avoid defective pricing claims, may find themselves overwhelmed should allegation of violations arise.

Chess Consulting (“Chess”) is uniquely positioned to assist with every phase of the GSA sales life cycle, including monitoring or investigating compliance, contract renewal, mandatory disclosure, and claim response.

Pre-Award Disclosures

Before a company can sell goods or services on a GSA schedule, it must negotiate prices. After completing the administrative steps needed to register with the GSA, a company must prepare a Commercial Sales Practices (“CSP”) disclosure detailing the prices and discounts offered to the various classes of customers that comprise the company’s sales. The CSP provides the GSA a guideline with which to negotiate from and seek to obtain “most favored customer” status. The company must also be prepared to disclose the historical sales data that supports its CSP, as the GSA has pre-award audit rights to validate the discount practices claimed.

Chess can assist companies preparing a CSP by mining sales data to ensure that the disclosure is accurate and withstands audit scrutiny, which is critical to avoid potential future defective pricing claims. Additionally, a comprehensive CSP can provide the contractor with insight into sales and discounting practices that may help with negotiating a favorable “basis of award” customer with the government.

Post-Award Compliance Monitoring

After a company and the GSA negotiate prices, a process which includes the contracting officer determining that the prices are “fair and reasonable,” the contract is awarded and the company begins performance. Even after the contract and price negotiations, however, the company must adhere to additional compliance obligations. Each GSA-awarded contract typically contains the Price Reduction Clause (“PRC”), which states in part:

“A price reduction shall apply to purchases under this contract if a contractor...grants more favorable discounts or terms and conditions than those contained in the commercial catalog, price list, schedule, or other documents upon which this contract was awarded.”

The PRC stipulates that anytime the discount relationship established by the CSP is disrupted by selling at a lower price to a commercial customer, the government is owed a proportionate price reduction. The inclusion of the PRC places a heavy responsibility on the contractor to manage and monitor its ongoing sales to ensure there are no transactions that would trigger the PRC and require notification to the GSA.

Through our extensive experience with government contractors, including many engagements involving PRC-specific monitoring and reporting issues, we can help our clients ensure that the appropriate controls and procedures are in place to identify and prohibit transactions that may lead to a PRC violation.

Investigations, Mandatory Disclosure, and Claim Response

It is not uncommon that a company new to government contracting fails to invest the requisite time and attention into developing its CSP, or it inadequately monitors its sales to prevent PRC violations. When this occurs, a company may find itself in violation of the regulations. Whether the issue is raised internally from a compliance review or gains external exposure, such as in the case of a whistleblower, Chess has the expertise to support our clients in taking the proper steps to ensure that a thorough review is conducted and the risk exposure is quantified. We have a long history of working with external legal counsel acting as an expert witness in support of our clients. We have also assisted in preparing the analyses necessary for a robust Mandatory Disclosure presentation to GSA auditors to proactively address possible legal action.

Transactional Data Rule

In order to modernize oversight of commercial pricing and enhance the ability of the government to make smarter purchasing decisions through the sharing of information, the GSA has implemented a pilot program entitled the Transactional Data Reporting Rule. This rule requires certain GSA contract holders to submit various transactional data points to GSA on a monthly basis. While this reporting can be seen as another onerous compliance requirement, it compensates contractors for their effort by removing the CSP disclosures and the PRC basis of award tracking customer requirement. While this program remains in its pilot phase, the GSA has communicated that the agency believes that adoption of robust and current transactional data reporting will better inform purchasing decisions and hopes to adopt the requirements on a larger scale in the future.

THE CHESS CONSULTING ADVANTAGE

Our highly experienced team of government contract accounting, investigation, and regulatory compliance experts has worked with contractors and their legal counsel on a multitude of GSA-related matters over many years. Our clients have included some of the largest government contractors in the country spanning a wide variety of industries, some of which include aerospace and defense, healthcare, construction, technical services, and higher education. Our experience also includes:

- A large telecommunications contractor. Through an initial internal investigation, the company identified the possibility of a potential violation of the PRC terms of its GSA contract. We began working with the company on the evaluation of the potential PRC violation. We reviewed the company's applicable commercial sales and compared those with its government sales, and we determined that the problem was not as significant as initially feared. We provided the company with our analysis in order to facilitate a settlement with the government.
- A large software provider. The company was informed of a potential violation of the PRC and Defective Pricing Clause of its GSA contract via a qui tam lawsuit. We were engaged to assist the company in determining the extent of the issue and to act as an expert in the matter. With the help of outside counsel and the company, we analyzed the company's commercial and government sales data and calculated potential damages. Based on this analysis, the company and its outside counsel was able to negotiate a settlement with both the relator and the government.

Chess often works under the direction of the contractor's legal counsel to provide investigative services, including technical accounting, internal control and government contract regulatory guidance and analysis, data collection review and analysis, and interview support, as well as other services that counsel may require. Our engagement teams are comprised of Certified Public Accountants, Certified Fraud Examiners, forensic accountants, corporate governance specialists, and regulatory experts. We understand how to work and communicate effectively with legal counsel, management, and boards of directors. These capabilities paired with our ability to analyze large data sets makes us uniquely qualified to assist companies to comply with current and forthcoming reporting requirements.

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When the right move matters, contact Chess Consulting.