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Domain Expertise

GSA Helps Agencies Implement MEGABYTE Act

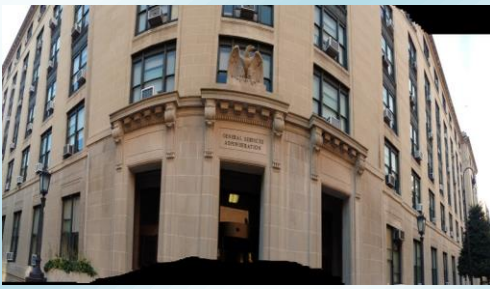
GSA is offering other agencies help in managing their software licenses.

In July, President Barack Obama signed the Making Electronic Government Accountable by Yielding Tangible Efficiencies, or MEGABYTE, Act into law. The legislation directs agencies to come up with a central software licensing strategy to reduce duplicative contracts.

GSA is currently hosting weekly information sessions, grouping software license managers from the 24 chief financial officer agencies, about how the MEGABYTE Act might impact teams. GSA's IT Software Category, the Office of Management and Budget, and the Defense Department's Enterprise Software Initiative are also helping agencies plan their license management strategies.

Those sessions include discussions about tracking savings, centralizing software, managing vendors, and "accurate software inventory data."

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Federal Marketplace Matters

Trade association urges Congress to act on IT modernization bill

The Professional Services Council has thrown its support behind H.R. 6004, the Modernizing Government Technology Act of 2016, urging the 114th Congress to act on the House-passed bill when it's back in session on Nov. 14.

In a Nov. 4 letter addressed to Sens. Mitch McConnell, Harry Reid, Ron Johnson, Tom Carper, Jerry Moran and Tom Udall, the trade association expressed its belief that the bipartisan bill offered "an important opportunity ... to improve cybersecurity and address concerns with the government's legacy IT systems," PSC President and CEO David Berteau said.

According to the letter, PSC feels the bill represents a balanced compromise of the interests of the agencies, the Office of Management and Budget, and stakeholders in Congress and will enable the adoption of new, more effective federal IT.

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VA Adds 15 Sites to Innovators Network Program; Bob McDonald Comments

The Department of Veterans Affairs' center for innovation will expand its *Innovators Network* program with the addition of fourteen new VA medical center innovation sites as well as a national cemetery innovation site.

VA said Tuesday the selected sites were selected from a pool of 44 innovation sites based on a review of 12 parameters that included plans to empower and engage employees, local infrastructure and proposed Veteran-centered approaches.

"We have invested in creating a culture of innovation which we can constantly find, test and create better ways to deliver services to our veterans," said Bob McDonald, veterans' affairs secretary.

Sites selected to serve as Innovators Network Sites in 2017 include:

- Albany Stratton VA Medical Center
- Fort Snelling National Cemetery
- Grand Junction VA Healthcare System
- Hines VA Medical Center
- Hunter Holmes McGuire VA Medical Center
- Lebanon VA Medical Center
- Lexington VA Medical Center
- Louis Stokes Cleveland VA Medical Center
- New Mexico VA Healthcare System
- Puget Sound VA Healthcare System
- South Texas Healthcare System
- Tuscaloosa VA Medical Center
- VA Loma Linda Healthcare System
- VA San Diego Healthcare System
- White River Junction VA Medical Center

VA noted that the innovators network has established a pathway designed to streamline the development of new experiences for veterans and their respective families and the agency has invested in 38 projects designed to boost veteran access to services and care.

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Federal Marketplace Matters

New DoD research policy gets glowers from industry

Industry has to do a little more work if it wants money from the Pentagon for research and development.

The Defense Department changed its policy on independent research and development (IRAD) last week, requiring companies to consult with the Pentagon about research done partly on the government's dime.

DoD is also considering a new policy that will require contract officers to consider the use of IRAD in the final price of a contract when choosing a company for a contract.

....Currently, the Pentagon funds defense companies for the research and development they do since some of the products those companies create only have one consumer, the government. At times, those products never translate into products that can be put on the market for private consumption.

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Supreme Court Hears Argument Over False Claims Act's Seal Requirement

Last week, the United States Supreme Court heard argument in *State Farm Fire & Casualty Co. v. United States ex rel. Rigsby* over the False Claim Act's (FCA) "seal requirement." The controversy highlights an important statutory tool for government contractors who face allegations of making false claims for payment. It also provides important lessons for those seeking to bring such allegations.

Under the FCA, a *qui tam* complaint must be filed under seal and remain under that seal for sixty days. [31 U.S.C. § 3730\(b\)\(2\)](#). During those sixty days, the Government can intervene in the case or request an extension of time. Meanwhile, the plaintiff may not disclose the existence of the suit to the public.

Lower courts are divided about how to penalize a plaintiff who discloses allegations before the end of the seal period. The Sixth Circuit, for example, requires outright dismissal of FCA claims for any and all violations of the seal requirement. *United States ex rel. Summers v. LHC Grp. Inc.*, 623 F.3d 287, 291 (6th Cir. 2010). Alternatively, the Second and Ninth Circuits impose a "balancing test" to determine whether dismissal is appropriate, typically taking into account: (1) the harm to the government; (2) the nature of the disclosure; (3) whether the disclosure was made in bad faith. *United States ex rel. Lujan v. Hughes Aircraft Co.*, 67 F.3d 242, 245-47 (9th Cir. 1995); *United States ex rel. Pilon v. Martin Marietta Corp.*, 60 F.3d 995, 997, 999-1000 (2d Cir. 1995).

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Federal Marketplace Matters

DISA preps \$17 billion JIE contract proposal

Vital IT capabilities that are key to maintaining information supremacy will soon receive a much-needed upgrade. After a lengthy solicitation process marred by several setbacks, the Defense Information System Agency (DISA) has finally finished the request for proposal (RFP) phase for its five-year, \$17.5 billion ENCORE III indefinite-quantity, indefinite-quantity, multiple-award contract. The program aims to replace aging systems across the Department of Defense (DoD) and thus enhance global IT capabilities for military services and other federal agencies.

The RFP outlines 19 separate performance areas of interest, including cyber security assessment and authorization, information communications technology, and computer-telephony integration. Contract winners are responsible for the development, installation, fielding, training, operation and life-cycle management of these components and systems in the operational environments.

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How Trump's business acumen could influence the federal workforce

President-elect Donald Trump has [indicated](#) that under his administration, government will be smaller. He's suggested a hiring freeze of federal employees through attrition, and his 5-point ethics plan includes a 5-year lobbying ban on all executive branch employees after they leave federal service.

That will surely leave a mark on the federal workforce, but federal unions, associations and experts say its largely unclear how a Trump presidency will impact workers' pay and benefits. But they do see Trump's business acumen and experience as a key factor in conversations on federal employee accountability and performance — conversations that began in Congress during the Obama administration and won't likely go away in 2017.

"There will be an emphasis on just how do we better address poor performers in a quicker, more timely fashion while still ensuring some kind of fundamental fairness," said Dan Blair, president and CEO of the National Academy of Public Administration.

Bill Dougan, president of the National Federation of Federal Employees union, said he anticipates that many [familiar bills](#), particularly those impacting federal employees' retirement benefits, official time and hiring and firing procedures, will be back on the table again in a Republican-controlled Congress.

Blair agreed.

"You're going to see a much more receptive audience in the administration than you have seen with the Obama administration," he said. "I do think that frees up those proponents in the House and possibly the Senate to move forward with those proposals on maybe a grander scale."

Trump's business experience may also run counter to recent pushes to give federal employees a bigger pay raise, Blair said.

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Federal Marketplace Matters

Need help accessing procurement opportunities?

Free Training is available and sponsored by the GSA Office of Small Business Utilization

Understanding How to Access Procurement Opps

Sometimes, the biggest challenge in government contracting is finding opportunities to bid on. This training is designed to review GSA sources for [procurement opportunities](#) -- both planned and posted.

- You will learn how to identify and understand when opportunities are available through targeted data for your strategic planning.
- You'll hear about the best way to plan your engagement with program managers and small business specialists.

The quarterly training includes a look at [GSA's small business goals](#) and newly posted procurement's.

Upcoming training is scheduled on Monday, Jan 16, 2017. [Register Today!](#)

Educational

Mary Davie: GSA, OMB, DoD Offer Software Category Mgmt Support for Agencies

The General Services Administration, Office of Management and Budget and Defense Department have begun to co-host information sharing and collaboration sessions to provide software category management assistance to agency software license managers.

Mary Davie, assistant commissioner of the integrated technology service office at GSA's Federal Acquisition Service, wrote in a blog entry [posted Wednesday](#) the Enterprise Software Category Team — comprised of GSA, OMB and DoD-Enterprise Software Initiative — supports agencies' efforts to implement the *Making Electronic Government Accountable by Yielding Tangible Efficiencies Act*.

She said the MEGABYTE Act directs agency chief information officers to manage their information technology infrastructure and conduct software category management in efforts to achieve savings that can be re-invested in IT modernization projects.

GSA's IT Software Category team works with industry and government professionals in enterprise software licensing, software asset management, strategic sourcing and category management to help agencies meet MEGABYTE requirements, according to Davie.

She added ESCT hosts meetings where software license managers from 24 Chief Financial Officer Council agencies discuss progress in savings; software centralization; strategic vendor management; and software inventory data collection.

The team has facilitated nine sessions with representatives from 28 separate agencies which led to the creation of tools and templates designed to aid vendor management planning, software centralization, cost savings analysis and automated software asset management, Davie wrote.

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Upcoming Events

CGP Fall Training Conference – November 17th. The Westin TysonsCorner, VA

[Register](#)

April 13 2017 B2G Conference & Expo Joint Base Langley / Eustice

[More Info](#)

Watch out for GSA Events in 2017:

MARCH 7-8, 2017 IFMIPS (51V, 03FAC) Industry Day Event

May 2017 the GSA Federal Acquisition Training Symposium penciled in for in Huntsville, Alabama, and

June 2017 the Professional Services Industry Day in Tacoma, Washington.

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Compliance

The CPARS Process: Engage Early and Often

As federal contract dollars become more and more scarce, contractors must aggressively posture themselves to win contracts. Since past performance often plays a key role in source selection, a poor past performance rating can have far-reaching impacts. Fortunately, the Contractor Performance Assessment Reporting System ([CPARS](#)) process allows contractors to be actively engaged in ensuring that future source selection officials have a fair and accurate assessment of their past performance. Contractors must be aware of their rights and responsibilities in this regard—and should, whenever possible, take full advantage of any opportunity to help shape their CPARS ratings. Of course, contractors sometimes have to fight for the right to be heard. In the recent case of [Colonna's Shipyard, Inc.](#), ASBCA Nos. 59987, 60104, and 60105, the Armed Services Board of Contract Appeals (ASBCA) clarified the boundaries of its jurisdiction over disputes concerning such ratings.

The Navy awarded the Appellant, Colonna, a fixed price contract to dry-dock and repair a navy vessel and barge. After Colonna performed the contract, in July 2014, the Navy issued its first CPAR rating, in accordance with the terms of the contract. The CPAR awarded Colonna unsatisfactory performance ratings and contained numerous errors—a fact that the Navy did not dispute. Colonna quickly communicated its concern over the errors to the Navy, and sought to have the rating modified. Eight months later, in March 2015, the Navy re-issued the CPAR, which again assigned Colonna a poor performance rating and contained many errors. Colonna filed a claim with the Contracting Officer (CO) a few weeks later, requesting that the CPAR be withdrawn and refiled with accurate facts. Some three weeks after that claim was filed, in April 2015, the Navy again amended the CPAR but repeated many of the same errors. Colonna submitted a second claim a month later, in May 2015, largely identical to the first, objecting to the revised CPAR; it filed its initial claim at the ASBCA that same day, asserting a deemed denial of its March and May claims by the Agency. In September 2015, the Navy made additional minor changes to the CPAR; Colonna filed an amended complaint at the ASBCA in January 2016, in addition to a partial motion for summary judgment. The Navy filed a motion to dismiss in response.

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