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 Domain Experts in GSA/VA
 Schedule Consulting





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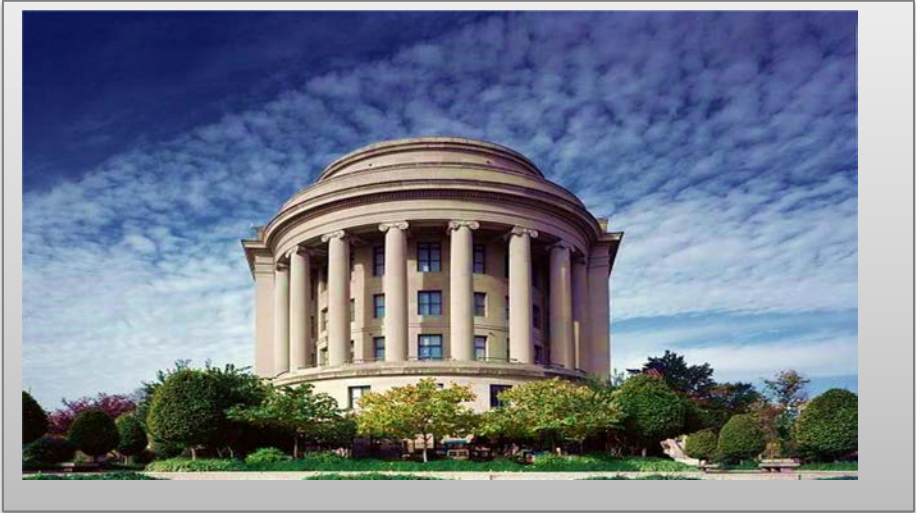
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Domain Expertise

GSA Seeks Industry Feedback on Plans to Reopen Office Products & Supplies Contract Vehicle

The General Services Administration has posted a request for information to gather industry feedback on the agency’s plans to reopen an acquisition vehicle for office products and supplies.

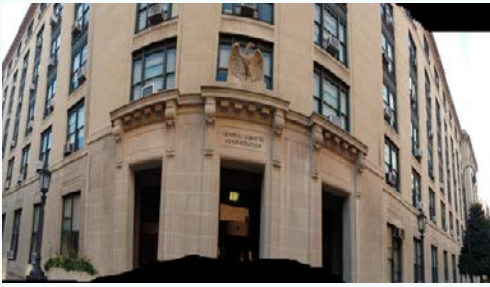
GSA said **Wednesday** RFI responses will inform the agency’s plans to accept new offers for Multiple Award Schedule 75 – Office Products and Supplies in fiscal year 2017.

“This RFI builds on the Industry Day we held earlier in the year and incorporates other feedback, too,” said Peter Han, GSA Northeast Caribbean Supply and Acquisition Center director.

Han added GSA aims to update MAS 75 in an effort to increase small business participation by at least five percent.

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Federal Marketplace Matters

2016 saw large uptick in bid protests sustained by GAO

In 2016, the Government Accountability Office came down on the side of companies challenging federal procurement decisions more often than in any year in almost a decade, according to [data](#) the office sent to Congress Thursday afternoon.

In its role as the government's independent arbiter over bid protests, GAO sided against federal agencies' initial awarding of contracts and [task orders](#) in nearly 23 percent of the cases it decided. The figure was up sharply from [2015](#), when GAO's procurement arbiters sustained just 12 percent of protests. It was also the highest rate of sustained protests since 2007, when the office agreed with protesting vendors in 27 percent of that year's cases.

The raw number of protests GAO sustained was also up significantly over the past year: It upheld 139 complaints out of a total of 616 cases it decided in 2016, the most sustained cases in any year since 2001, when the office's annual reports began including tallies of the data. That compares to just 68 sustained cases out of 587 GAO decided in 2015. The number of sustained cases has only reached triple digits in one other year: 106 in 2012.

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SBA and GSA, OFPP not seeing eye-to-eye on 'rule of two' application

A major dispute is brewing in the small business community. Just four months after the Supreme Court's June 16 [unanimous decision](#) on the Kingdomware case, the Small Business Administration is taking a stand on the "rule of two" that is stressing out industry and agencies alike.

As a quick reminder, the nation's highest court ruled in the Kingdomware case that the Veterans Affairs Department must continue to apply the "rule of two" for veteran-owned small businesses even if the agency surpassed its annual prime contracting goal. The "rule of two" states if an agency can find two or more qualified small businesses during market research of a contract under the Simplified Acquisition Threshold — between \$3,000 and \$150,000 — it must set aside the solicitation.

Now the Small Business Administration is expanding that Supreme Court ruling to apply to all task and delivery orders under SAT if the request for proposals comes under the General Services Administration's schedules.

SBA issued a [memo](#) on Oct. 20 that was not widely known about until recently, telling its Procurement Center Representatives (PCRs) that the Kingdomware decision should apply to like statutes because task or delivery orders under multiple-award contracts are considered contracts.

....But SBA's interpretation is a major policy shift. It's reversing long-held notions that task and delivery orders were not "contracts" under the FAR and legal definitions. Shoraka said with the Supreme Court's unanimous decision and support from Capitol Hill, SBA believed it was on solid ground.

Federal contracting experts predicted the Kingdomware decision would send ripples through the market similar to the 2008 [Delex decision](#) where the Government Accountability Office found that the "rule of two" must apply to task and delivery orders under all multiple award contracts.

[Read Article](#)



Federal Marketplace Matters

8 Companies Protest \$1.5B DHS Agile Buying Experiment

A new Homeland Security Department program promoting agile software development has hit a stumbling block.

The \$1.54 billion Flexible Agile Support for the Homeland contract vehicle—a group of 13 vendors pre-approved to sell agile services to the department—has been halted by protests from at least eight companies not included on that list who filed protests with the Government Accountability Office. Though Congress let GAO's authority over civilian task orders worth more than \$10 million lapse in September, President Barack Obama on Wednesday signed into a law a bill that makes the authority permanent.

DHS announced the awards in November. The department selected 13 companies out of 114 after they demonstrated their agile methodologies, such as rapid prototyping and user-centered design, in a technical challenge.

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TDR Coming to the Professional Services Schedule

On December 12, 2016 the U.S. General Services Administration (GSA) announced that a mass modification will be released for the Professional Services Schedule (PSS) on January 13. The mass modification will add transactional data reporting (TDR) requirements to PSS. The TDR modification is voluntary for existing contractors, but mandatory for new offers. PSS will be the eighth and final Schedule to include the TDR pilot.

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Navy Spiral II BPA Update

TGG Consultants have learned that the current BPAs under 71-1 AND 71-2 will be extended through September 2017. Our Navy contact has stated that "The purpose of these extension is to provide the Navy sufficient time to award the new BPA contracts." No award estimate was given just the simple statement "as soon as possible....we are working very hard to get them awarded."

If you have any questions, please contact your TGG Consultant

Navigating the Future of Mobile Services by Mary Davie

(This blog post reflects my perspective as the government-wide IT Category Manager)

Today, the federal government spends more than \$1 billion annually on mobile services. An agile and evolving federal workforce is driving an ever-increasing need for agencies to have the ability to meet their missions, and do their work securely anywhere, anytime, and on any device in order to serve U.S. citizens.

Fast-changing mobile technology and increased demand are putting pressure on agencies to determine how best to acquire, maintain, and manage mobile resources. So, the government needs a mobile plan that looks ahead. And that's just what the Mobile Services Category Team (MSCT) aims to accomplish.

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Federal Marketplace Matters

FirstNet contract award delayed

A legal protest from one of the competing vendors pushes back progress at least several months.

The first nationwide interoperable communications network for first responders is facing another delay.

The First Responder Network Authority (FirstNet) convened its quarterly meeting Wednesday to discuss its post-RFP strategy, releasing a 100-day plan that will be implemented after the network's \$7 billion contract is awarded. A press release telegraphs the agency's readiness to move forward.

But before the agency can implement its plan, a contract needs to be awarded and new legal issues block immediate progress. One vendor that applied to the RFP, Rivada Mercury, was deemed by FirstNet not to be within competitive range of the standards established by federal acquisition regulations, thereby dropping the vendor from further consideration in the competitive process.

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Department of Defense Withdraws Controversial Proposed Rule on Commercial Items, But Expect Close Scrutiny to Continue

The Department of Defense (DOD) has withdrawn a proposed rule that would have effectively narrowed the standards under which an item qualifies as "commercial" and that would have broadly expanded the type of information required to determine price reasonableness. As [previously reported](#), the proposed rule was intended to implement Section 831(a) of the Fiscal Year 2013 (FY13) National Defense Authorization Act (NDAA), which required DOD to issue guidance regarding the submission of other than certified cost or pricing data for commercial item acquisitions. The proposed rule followed recent DOD Office of Inspector General reports on pricing in commercial item acquisitions, which raised concerns that Contracting Officers had not analyzed sufficient pricing information to determine that the prices of certain sole source commercial item products were fair and reasonable. The proposed rule generated significant negative comments, including from the American Bar Association's Section of Public Contract Law. With little fanfare, DOD [closed the DFARS case](#) on the proposed rule and incorporated the FY13 NDAA issues into a new DFARS case that will address both Section 831(a) of the FY13 NDAA and the commercial item provisions in the Fiscal Year 2016 (FY16) NDAA.

The FY16 NDAA includes **seven** provisions relating to procurement of commercial items. Of particular significance to contractors, the NDAA provides:

- Section 851: This section directs DOD to publicly post commercial item determinations by DOD Contracting Officers and to establish a centralized office to provide assistance and expertise to Contracting Officers regarding commercial item determinations. To further encourage consistency across DOD components, this section also requires Contracting Officers to presume that a prior commercial item determination by any DOD component provides a valid determination for subsequent procurements of the same item. Failure to follow this presumption triggers a review by the head of the contracting activity, who must either determine that the prior determination was appropriate and still applicable, or issue a revised determination with a written explanation of the basis for the revision.

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Federal Marketplace Matters

State and local IT spending to grow in 2017

The pressure to defend against cyberattacks, upgrade outdated legacy systems and meet consumer expectations could keep state and local government IT spending climbing in 2017.

According to a recent Onvia report, “2017 State and Local Government Contracting Forecast,” the continued optimism in tech spending even during economic recovery implies that governments find these solutions “mission critical” and a financial investment.

In fact, annual IT spending by state and local government and education sectors increased 17 percent from 2009 to 2016, based on data from the Bureau of Economic Analysis. IT purchasing is expected to continue rising at the same rate, as factors like the evolving role of IT, cyber threats, agile development and new ways of standardizing cloud services affect the way local and state governments purchase and use IT next year.

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Educational

New FAR Rule Encourages “Constructive Exchanges” between Federal Agencies and Contractors

On November 29, 2016, the Department of Defense, General Services Administration, and the National Aeronautics and Space Administration [proposed](#) an amendment to the Federal Acquisition Regulation (“FAR”) aiming to encourage pre-acquisition communications between industry professionals and federal agencies. This amendment is part of a five-year long effort by the Obama Administration to clarify that communications between potential government contractors and federal agencies are not only allowed, but encouraged.

The proposed rule would amend FAR 1.102-2(a)(4), which currently states that “[t]he Government must not hesitate to communicate with the commercial sector as early as possible in the acquisition cycle to help the Government determine the capabilities available in the commercial marketplace. The Government will maximize its use of commercial products and services in meeting Government requirements.” In the revised version, the following language would be added: “Government acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry as part of market research . . . so long as those exchanges are consistent with existing laws, regulations, and promote a fair competitive environment.” There are a number of laws and regulations that may be come into play during pre-acquisition exchanges with government officials, including the Procurement Integrity Act, [41 U.S.C. § 423](#), Anti-Kickback Act, [41 U.S.C. § 51 et seq.](#), restrictions on lobbying activity, regulations on collusive bidding, prohibition on contingent fee arrangements, and various laws prohibiting gifts and gratuities to and bribery of federal officials.

The proposed FAR amendment follows the publication of two “myth-busting” memoranda in 2011 and 2012, which were intended to “address misconceptions commonly held by industry and Government regarding the role of communications during the acquisition process.” The [first memorandum](#), published in February 2011, targeted federal agencies, and commented that “agencies do not take full advantage of the[] existing flexibilities” when it comes to vendor communication, and that “agency officials may be reluctant to engage in these exchanges out of fear of protests or fear of binding the agency in an unauthorized manner.”

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Upcoming Events

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.



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

[More Info](#)



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Compliance

Justice Department Recovers Over \$4.7 Billion From False Claims Act Cases in Fiscal Year 2016

Third Highest Annual Recovery in FCA History

The Department of Justice obtained more than \$4.7 billion in settlements and judgments from civil cases involving fraud and false claims against the government in fiscal year 2016 ending Sept. 30, Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department's Civil Division, announced today. This is the third highest annual recovery in False Claims Act history, bringing the fiscal year average to nearly \$4 billion since fiscal year 2009, and the total recovery during that period to \$31.3 billion.

"Congress amended the False Claims Act 30 years ago to give the government a more effective tool against false and fraudulent claims against federal programs," said Mizer. "An astonishing 60 percent of those recoveries were obtained in the last eight years. The beneficiaries of these efforts include veterans, the elderly, and low-income families who are insured by federal health care programs; families and students who are able to afford homes and go to college thanks to federally insured loans; and all of us who are protected by the government's investment in national security and defense. In short, Americans across the country are healthier, enjoy a better quality of life, and are safer because of our continuing success in protecting taxpayer funds from misuse."

Of the \$4.7 billion recovered, \$2.5 billion came from the health care industry, including drug companies, medical device companies, hospitals, nursing homes, laboratories, and physicians. The \$2.5 billion recovered in fiscal year 2016 reflects only federal losses. In many of these cases, the Department was instrumental in recovering additional millions of dollars for state Medicaid programs. This is the seventh consecutive year the Department's civil health care fraud recoveries have exceeded \$2 billion.

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