



[About The Gormley Group](#) | [Join Our Mailing List](#) | [Our Services](#)

IN THIS ISSUE

[Domain Expertise](#)

[Federal /State Marketplace](#)

[Matters](#)

[Educational Topics](#)

[Compliance Issues](#)

QUICK LINK

[Our Services](#)

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Domain Expertise

Cloud.gov Achieves FedRAMP Accelerated Authorization

The General Services Administration announced on Thursday that cloud.gov, a service developed by GSA’s 18F that enables Federal agencies to host and update websites and Web applications, had obtained a Provisional Authority to Operate from the FedRAMP Joint Authorization Board. Cloud.gov is the second cloud service provider to complete the **FedRAMP Accelerated** program.

“FedRAMP Authorized status marks completion of a comprehensive security and compliance assessment that enables Federal agencies to start using cloud.gov with significantly reduced effort,” 18F said Thursday in a blog post.

According to GSA, the entire authorization process took 23 weeks. The JAB, however, spent approximately 15 weeks evaluating the application, which is approximately the same length of time it took to evaluate Microsoft’s Dynamics CRM Online Government, the first cloud service provider to receive FedRAMP Accelerated authorization. Both times fall within the six-month goal GSA set when the Accelerated program was announced.

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Federal Marketplace Matters

Reducing the Costs of Procurement Regulation--A Step in the Right Direction

The Code of Federal Regulations (CFR) is around *180,000 pages and is growing at about 2,000 pages a year*. In 2008, the Office of Management and Budget (OMB) and the Small Business Administration (SBA) estimated the regulatory compliance costs to be approximately 1.752 trillion dollars. These figures were cited in 2015 testimony before the Senate Armed Services Committee by the Honorable Jacques S. Gansler, Ph.D., currently Professor Emeritus at the University of Maryland's School of Public Policy. He cited these figures in making the case for reducing regulations, policies, and procedures to reduce barriers to entry to the federal market and to increase the Defense Department's access to commercial innovation, which is needed desperately to ensure technological superiority on the battlefield.

That is why the January 30, 2017 Executive Order (EO), *Reducing Regulation and Controlling Regulatory Costs*, is a step in the right direction in reducing regulatory burdens.

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House Vote to Kill Obama Fair Pay, Safe Workplace Rule

Two major contracting groups hailed House passage on Thursday of a long-expected resolution to undo the Obama administration's 2014 "Fair Pay and Safe Workplaces" order requiring contractors to report past violations of 14 labor laws.

House joint resolution 37, sponsored by Rep. Virginia Foxx, R-N.C., declares that the implementation rule submitted in August by the Defense Department, General Services Administration, and NASA relating to the Federal Acquisition Regulation has no effect.

It passed 236-187 amid a series of votes using the **1996 Congressional Review Act** to nullify regulations enacted in the past 60 days. (Other rules involved streams protection, land management royalties and Social Security rules on gun purchase background checks for people with mental disabilities.)

We welcome the House action," said David Berteau, president and CEO of the 400-member Professional Services Council, in a statement. "The blacklisting rule fails to provide companies with basic due process, imposes significant new and non-value added reporting requirements, and risks denying federal buyers access to the best private-sector providers to meet government needs. With the disapproval of this rule by the House, and we hope with prompt action by the Senate and then signature by the president, a significant overhang will be removed from the acquisition process."

That view was echoed by the Associated Builders and Contractors, whose local affiliate had filed a successful court challenge to block the rule from taking effect last fall. That group "has vigorously fought the Obama administration's illegal blacklisting rule, which would have treated frivolous accusations of wrongdoing as grounds to prohibit qualified contractors from performing federal work," said ABC Vice President of Regulatory, Labor and State Affairs Ben Brubeck.

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Federal Marketplace Matters

GSA Seeks Proposals for Huge Governmentwide Charge Card Contract

The General Services Administration is seeking proposals for a massive new contract it will award this summer for its governmentwide charge card payment program.

The agency [issued a request for proposals](#) on Wednesday for GSA SmartPay 3, the next iteration of a nearly 20-year-old program that provides the government with purchase, travel, fleet, and integrated payment solutions. The contract runs through Nov. 28, 2021, with a potential extension to 2031. The current contract for GSA SmartPay 2 expires on Nov. 29, 2018. The estimate total value for the SP3 contract is \$700 billion, according to the RFP.

GSA SmartPay is the world's largest commercial payment program, providing services to 560 federal agencies and other organizations and supporting more than 3 million accounts. In fiscal 2016, agencies used the program for purchase, travel and fleet needs "more than 91 million times around the globe for a total of more than \$28 billion in transactions," according to a GSA statement.

[Read More](#)

VA shakes up infosec ranks

The senior IT ranks at the Department of Veterans Affairs is getting refreshed after the exit of CIO LaVerne Council, a political appointee. Her temporary replacement Rob Thomas, formerly a senior deputy CIO, announced the moves in an email to staff in the early evening of Feb. 1.

Dominic Cussatt will become acting chief information security officer. He's helped lead the VA Enterprise Cybersecurity Strategy. Before joining VA, he served at the Department of Defense as a cybersecurity policy lead and held the post of deputy CISO.

Roopangi Kadakia, who was VA's CISO until the move, will shift to help lead the agency's ongoing cloud transformation as an expert in the Enterprise Program Management Office. In a previous role at NASA, Kadakia helped direct the move of 160 systems to the cloud. Thomas said she is, "uniquely qualified to lead cloud implementation and help [the Office of Information and Technology] modernize and drive improved outcomes."

"These leadership changes set OI&T up for success in modernizing our systems and eliminating our material weaknesses," Thomas said.

VA has longstanding information security issues, which past leadership had pledged to remediate. At [a March 2016 hearing](#), an official from VA's Office of Inspector General testified that 57 of 69 information security recommendations made to the VA are still open, and of those, 17 were repeat recommendations and 13 were modified repeat recommendations.

[Source](#)





Federal Marketplace Matters

House Oversight committee places high priority on renewing E-Gov Act provisions

While the federal IT and acquisition communities still are “patiently” waiting for President **Donald Trump** to name key players at the Office of Management and Budget, the General Services Administration and the Office of Personnel Management, Republican lawmakers gave us a little bit of insight into their plans for 2017.

The House Oversight and Government Reform Committee and the House Homeland Security Committee both released oversight plans in the last few weeks, giving agency IT and acquisition executives and contractors insights into their plans.

While details are still murky from the committees, there is plenty to chew on.

Rep. **John Ratcliffe** (R-Texas), chairman of the Homeland Security Cybersecurity and Infrastructure Protection Subcommittee, said one **major goal** for him is ensuring agencies are using the EINSTEIN and continuous diagnostics and mitigation (CDM) program to their fullest extents.

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GSA Clarifies Jurisdiction Over Fair Opportunity Complaints Under GSA Multiple-Award Contracts

The General Services Administration (GSA) recently issued a **Final Rule**, amending the General Services Administration Acquisition Regulation (GSAR) to clarify that the Ordering Agency Task and Delivery Order Ombudsman has jurisdiction and responsibility to review and resolve “fair opportunity” complaints on task and delivery orders placed against GSA multiple-award contracts. The Final Rule requires that (1) the Ordering Agency include contact information for the Ordering Agency’s Task and Delivery Order Ombudsman when placing task and delivery orders against GSA multiple award contracts, and (2) companies filing a fair opportunity complaint to an Ordering Agency other than GSA must simultaneously provide a copy of the complaint to the GSA Procurement Ombudsman for informational purposes, so that GSA can maintain insight into fair opportunity complaints that arise on orders other agencies place against GSA contracts.

By way of background, FAR 16.505(b)(1)(i) provides that the task or delivery order contracting officer must afford each awardee under a multiple-award contract a “fair opportunity” to be considered for each order exceeding \$3,000, except as provided in subsection (b)(2). The required procedures depend upon and escalate with the value of the specific task or delivery order. Per FAR 16.505(b)(8), the head of each agency is required to designate a senior agency official, who is independent of the contracting officer and may be the agency’s competition advocate, as the Task-Order and Delivery-Order Ombudsman. Such Ombudsman must review contractor complaints and ensure that all contractors are afforded a fair opportunity to be considered, consistent with the applicable contract procedures.

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Federal Marketplace Matters

CDM Phase 3 complexities causing DHS, GSA to rethink approach

Like the tortoise racing the hare, the Homeland Security Department's continuous diagnostics and mitigation (CDM) program continues to make slow but steady progress.

The CDM program now is in its **fourth year** and every agency is in the midst of implementing Phase 1 tools and has a contract in place for Phase 2. The agency and governmentwide dashboards are on tap to report data in 2017. Now DHS and its acquisition partner, the General Services Administration, are starting to think about what comes next in 2018 when the current \$6 billion blanket purchase agreement contract expires.

"Phase 1 and Phase 2 were centrally funded by DHS and we saw huge savings. In most cases 30 percent and in some cases as high as 60 percent-to-70 percent," said **Jim Piche**, a group manager at GSA's FEDSIM office.

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Educational

Contractor Alert: Beware Bilateral Modification Release Language

Contractors intending to submit a Request for Equitable Adjustment or Claim on a government contract need to be aware of the implications of bilateral modifications.

In simple terms, a bilateral modification is a supplement to your company's contract with the government that is signed by both you and the government. The agency can use a bilateral modification to execute any number of contract changes or otherwise modify the terms of the agreement.

Sometimes, however, a contracting officer may use a bilateral modification to execute a change that the contractor believes is outside the scope of the original contract (also known as a Cardinal Change). In those cases, the contractor has two options: accept the change and perform the work – or refuse to perform and risk a default termination (and all of the devastating negative performance ratings that will follow).

Given that no contractor ever wants to voluntarily take a default termination – that means the only real option is to continue to perform. Therefore, contractors need to be smart about how to accept a Cardinal Change issued through a bilateral modification.

Specifically, when faced with a bilateral modification including disputed terms (such as scope of work, increased costs, or increased time to perform), contractors must reserve the right to pursue damages at a later date. An important part of reserving those rights is reading and understanding all of the terms and conditions set forth in the modification.

In particular, contractors must be mindful of waiver language. That is, specific language (routinely included by the government in bilateral modifications) that releases the agency from future claims for damages

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Upcoming Events

February 22-23 Southwest Acquisition Center's Industry Event for 56, 66 & 73

[See more information](#)

March 7-8, 2017 IFMIPS 51V, Industry Day Event [Register](#)

March 28 -29, 2017 IFMIPS 03FAC Industry Day Event [Register](#)

April 25-26, 2017 the GSA Federal Acquisition Training Symposium Huntsville, Alabama, [Registration Details](#)

June 6, 2017 the Professional Services Industry Day in Tacoma, Washington. [See more information](#)

TGG will be represented at all GSA Industry events above so if you are not able to attend contact your TGG consultant with any questions you may have.

April 13 2017 B2G Conference & Expo Joint Base Langley / Eustice [More Info](#)



Compliance

GAO Reaffirms Agencies' Broad Discretion to (Not) Consider Price Realism for Fixed-Price Contracts -

As a general rule, an agency is only required to evaluate a fixed-price offer for reasonableness (that is, whether the price is too high). Agencies are not required to evaluate fixed-price offers for realism (that is, whether the price is too low) and, in fact, *cannot* do so unless the solicitation advises offerors that a realism evaluation will be conducted.

GAO recently reaffirmed this principle when it denied a protest challenging an agency's refusal to consider the realism of offerors' fixed prices as part of a corrective action, even though the agency suspected that at least one offeror's price was unrealistically low.

Under [FAR 15.404-1\(d\)\(3\)](#), an agency may evaluate fixed-price contracts for realism "in exceptional cases," but it is not required to do so. [Ripple Effect Communications, B-413722.2 \(Jan. 17, 2017\)](#), confirmed the breadth of an agency's discretion to evaluate—or not—fixed price offers for realism.

Ripple Effect involved a challenge to the terms of a corrective action following Venesco, LLC's protest challenging an award made to Ripple. Venesco argued in its protest that the Army improperly declared its price to be unrealistic, in part because the solicitation was ambiguous as to whether offerors' fixed prices would be evaluated for realism. The Army then announced that the procurement would be resolicited, and made clear that price realism would not be evaluated.

Ripple then protested the scope of this corrective action, arguing that the Army should be required to evaluate offerors' prices for realism. Ripple noted that the Army's evaluation of Venesco's proposal already revealed concerns with Venesco's labor rates, "which were far below the average of all evaluated proposals in all but one labor category." Thus, "it would be unreasonable for the agency not to consider the risk posed by Venesco's prices."

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