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CONSIDERING THE GSA SCHEDULE? WHAT YOU NEED TO KNOW

**A Joint Webinar with
PilieroMazza PLLC and Global Services
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PRESENTED BY



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OVERVIEW

- ❖ A Brief Overview of GSA Schedule
- ❖ Terms and Conditions
- ❖ Advantages for Government and Industry
- ❖ The Most Favored Customer Pricing, Economic Price Adjustments, and the Price Reduction Clause
- ❖ Schedule Sales Numbers; Past Performance Requirements; Reporting and Paying the IFF
- ❖ Trade Agreement Act Restrictions
- ❖ The Small Business Administration's Rules Regarding the Assignment of NAICS Codes, Performance of Work, and More
- ❖ Forming Contractor Teaming Arrangements, Joint Ventures, and BPAs
- ❖ Issues to Remember When Novating GSA Schedules, Whether Due to the Formation of Partnership/JV or an Acquisition

DEFINITION AND ADVANTAGES OF HOLDING A GSA SCHEDULE CONTRACT



WHAT IS A GSA SCHEDULE?

- ★ A GSA Schedule Is a Catalog of Contractors That Have Been Awarded a Contract by GSA That Can Be Used by All Federal Agencies
- ★ It Mirrors Commercial Buying Practices
- ★ Past Performance Based Contract
- ★ Facilitates Government Procurement
 - Over 10,000,000 Commercial Items and a Multitude of Services Can Be Purchased From Over 15,000 Companies Worldwide



SCHEDULES OVERVIEW

- ★ Govt. Wide Acquisition Contract (GWAC) with optional Worldwide Scope
- ★ Open Season Solicitations
- ★ 5 Year Period of Performance (Three 5 Year Renewals)*
- ★ No Maximum Order Limits
- ★ No FedBizOpps Posting Requirements
- ★ 3 Requests For Quotations (RFQs) then **Best Value** Award
- ★ Pricing is Already Determined “Fair and Reasonable”
- ★ Federal Spot Discounting Permissible With No Repercussions
- ★ 0.75% Industrial Funding Fee (IFF)
- ★ Quarterly Reporting Only (GSA is **not** involved in orders)



GSA SCHEDULE SALES FY 2010-2013

Major Schedule Sales By Fiscal Year

	Schedule	FY-010	FY-11	FY-12	FY-13
IT Equipment, Software, & Services	70	\$16,108,561,587	\$15,921,082,354	\$15,608,657,956	\$14,434,856,538
Management Consulting	874	\$5,228,829,242	\$5,147,319,064	\$4,857,999,223	\$4,445,445,865
Professional Engineering Services	871	\$3,100,196,264	\$2,883,160,036	\$2,859,004,923	\$2,801,631,367
Total Solutions for Law Enforcement	84	\$2,731,743,719	\$2,614,966,830	\$2,478,811,008	\$2,011,629,701
Financial & Business Solutions	520	\$1,149,067,598	\$1,336,131,813	\$1,506,427,455	\$1,914,127,170
Furniture	71	\$1,555,778,382	\$1,610,378,218	\$1,253,246,520	\$1,036,485,420
Consolidated Schedule	CORP	\$864,907,156	\$857,413,760	\$818,050,156	\$808,532,883
The Office, Imaging & Document Solution	36	\$749,302,260	\$679,814,977	\$684,429,818	\$723,454,615
Logistics Worldwide Services	874 V	\$1,052,259,535	\$1,149,417,367	\$1,145,739,487	\$669,104,160
Scientific Equipment and Services	66	\$798,014,639	\$775,457,051	\$812,424,231	\$656,707,103
Office Products/Supplies & Services	75	\$705,804,571	\$725,251,890	\$711,732,975	\$614,984,556
Hardware Superstore	51 V	\$642,007,198	\$708,351,579	\$681,953,827	\$602,519,036
Transportation, Delivery & Relocation Solutions	48	\$613,989,224	\$641,833,964	\$577,987,383	\$578,363,526
Facilities Maintenance & Management	03FAC	\$337,193,314	\$436,431,116	\$461,514,174	\$481,365,929
Building & Building Materials	56	\$676,949,706	\$571,484,406	\$491,347,981	\$410,607,619
Environmental Services	899	\$416,851,201	\$494,202,397	\$442,335,109	\$408,377,843
Advertising, Integrated & Marketing Services	541	\$405,613,780	\$431,234,523	\$427,985,771	\$327,378,053
Travel Service Solutions	599	\$137,153,995	\$179,187,531	\$212,652,183	\$315,130,098
Human Resources and EEO Services	738 X	\$205,468,341	\$251,584,831	\$206,315,227	\$231,832,035
Food Service, Hospitality, Cleaning & Supplies	73	\$246,684,772	\$244,371,718	\$232,977,067	\$214,371,718
	Total				
	Sales	\$39,257,707,011	\$39,003,200,726	\$37,796,711,483	\$34,816,300,621



ADVANTAGES FOR GOVERNMENT

- ★ Millions of State-of-the-Art Commercial Products and Services
- ★ Orders Can Be Placed by Any Government Employee With Purchase Authority
- ★ Built-In Time and Money-Saving Tools For the Agency
 - Teaming Arrangements
 - Blanket Purchase Agreements
 - Pricing is “Fair and Reasonable”



ADVANTAGES FOR INDUSTRY

- ★ Priority Source of Supply Under FAR Part 8
- ★ Direct Customer Relationship (GSA is **not** involved in the order process)
 - Best Value Decision
 - Customization Possible
- ★ Limited Competition
- ★ Small and Large Business Participation
- ★ Speed



JUST HOW FAST?

- ★ It Takes an Average of 13-15 Days to Issue a GSA Schedule Order

VERSUS

- ★ This Compares to an Average 268 Days to Put a Contract in Place with Full and Open Competition



BPAs AND TEAMING

- ★ **Blanket Purchase Agreements (BPAs):**
 - Not a Contract - Simplified Method for Filling Repetitive Needs for Supplies And/or Services
 - BPAs Have Recently Been in the Hundreds of Millions of Dollars When Issued in Connection With GSA Schedules
- ★ **Teaming Agreements: (2 Scenarios)**
 - Prime Signs 1 (+) Subcontractors Under a Specified GSA Schedule
 - 2 (+) Companies Form Partnership To Act As Prime Using Multiple GSA Schedule Contracts



GSA SCHEDULE REQUIREMENTS & LIMITATIONS



GLOBAL
SERVICES

PAST PERFORMANCE REQUIREMENTS

★ Minimum Technical Requirement:

- Two years in business running revenue
- Relevant Project Experience:
 - Must have completed two projects per Special Item Number within the last two years or ongoing
 - Tasks must be of a similar complexity to the work solicited under each SIN

★ Minimum Pricing Requirement:

- A pricing structure consistent with your commercial practices & supporting documentation for EACH proposed service/product

★ Be sure to check the current solicitation for specific requirements for each SIN



REPORTING & PAYMENT OF THE IFF

- ★ Reporting to Be Done Quarterly Via VSC Web Site. This Information Was Provided to You Upon Contract Award. [Http://VSC.GSA.Gov](http://VSC.GSA.Gov)
- ★ Payment of IFF to Be Made Within 30 Days of End of Calendar Quarter
- ★ Reporting/Payment to Follow Your Standard Accounting Practices
- ★ Implement Systems to Assign Task Orders as GSA or Non-GSA (Annual GSA Audit)
- ★ Track by Each Special Item Number (SIN)



TRADE AGREEMENT ACT

- ★ Can be found in FAR 52.225-5
- ★ Only U.S.-made or designated country end products can be offered using your schedule contract
- ★ Items from non-designated countries must undergo substantial transformation into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.



PRICE ADJUSTMENTS

- ★ Prices Must Be Held for Twelve Months From Date of Award for Most Schedules
- ★ Thereafter Adjustable 3 Times Each 12 Month Per Contract up to Max of 4-10%
- ★ Price Adjustments Based on 3 Possibilities:
 - Increase in Commercial Pricelist
 - A Market Price Indicator Negotiated Prior to Contract Award
 - Pre-negotiated Set Escalation Factor
- ★ You Can Always Lower Your Price



PRICE REDUCTION CLAUSE

- ★ All MAS contracts remain subject to contract clauses GSAR 552.238-75, “Price Reductions”; and 552.215-72, “Price Adjustment -- Failure to Provide Accurate Information:
- ★ Before award of a contract, the Contracting Officer and the Contractor will agree upon the customer (or category of customers) which will be the basis of award, and the Government’s price or discount relationship to the identified customer (or category of customers)



PRICE REDUCTION CLAUSE

- ★ This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction
- ★ The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date





Multiple Award Contracts

**SBA Final Rule
Effective December 31, 2013**



OVERVIEW OF MAC FINAL RULE

- New Policies Regarding Set-Asides:
 - Total Set-Asides
 - Partial Set-Asides
 - Reserves
- Size Status
- Size Recertification
- NAICS Code Designations
- On-Ramp/Off-Ramp
- Limitations on Subcontracting



GENERAL NOTES FOR FINAL RULE

- The “if small at the initial offer, small for the life of the contract” concept for size eligibility will also apply to program eligibility. This means that, if an offeror was HUBZone or SDVOSB eligible when it won the set-aside contract, the contractor will remain HUBZone or SDVOSB eligible for the life of the contract, even if the contractor lost its program status during the course of the contract. Like the size recertification rule, however, this does not apply to long-term contracts or when there is a merger or novation.
- If “Agreements,” such as Basic Agreements, Blanket Purchase Agreements, and Basic Ordering Agreements, are set aside, SBA will determine size at the time of the response to the solicitation for the Agreement.
 - Additionally, since “Agreements” are not considered contracts, the concern must also qualify as small at the time it submits its offer or otherwise responds to a solicitation for each order.



SET-ASIDES

- The SBA final rule provides:
 - Set-aside for part or parts of multiple award contracts for small business concerns;
 - Set-aside orders placed against multiple award contracts; and
 - Reserve one or more contract awards for small business concerns under full and open competition, when the agency intends to make multiple contract awards.
- For partial set-asides, small businesses are allowed to bid on:
 - Non-set-aside portion
 - Set-aside portion
 - Both
- Prior to Act, no set-asides for Schedule contracts, only “reserved” awards



SECTION 1331 AUTHORITIES (PARTIAL SET-ASIDES; RESERVES; SET-ASIDE ORDERS)

- If the “rule of two” is not satisfied for the entire acquisition, agencies will have discretion to use one of several tools to increase small business participation.
- Examples of the available tools are:
 - To award a multiple award contract with a partial set-aside when the acquisition can be broken into small discrete portions (such as CLINs, SIN, etc.)
 - To use a contract “reserve” when the acquisition cannot be broken into smaller, discrete portions until the individual task orders are drafted
 - The contracting officers may set aside orders when the “rule of two” is met for a particular order on a multiple award contract that was competed on a full and open basis.
- Agencies have the discretion to forgo using the tools, even if the “rule of two” could be met.
 - If an agency declines to use the tools, it must document why it did not do so when they could have been used.



SECTION 1331 AUTHORITIES (PARTIAL SET-ASIDES; RESERVES; SET-ASIDE ORDERS)

- Under the final rule, small businesses will be permitted to submit an offer on the set-aside portion of a partial set-aside, the non-set-aside portion, or both.
 - This is different from FAR § 19.502-3 which requires small businesses to first submit responsive offers on the non-set-aside portion to be considered for the set-aside portion.



HOW TOTAL SET-ASIDES WORK

- The final rule expressly provides that contracting officers must set aside for small businesses an acquisition that will result in multiple award contracts when:
 - There is a reasonable expectation that two or more small businesses can provide the required services; or
 - Supplies at a fair market price.
- The contracting officer may (in lieu of small business set-aside) choose to set aside the contract for:
 - 8(a) businesses;
 - Qualified HUBZone small business concerns;
 - Service-disabled veteran-owned small business concerns (“SDVO SBC”);
 - Economically-disadvantaged women-owned small businesses/women-owned small businesses (“EDWOSB/WOSB”).



HOW PARTIAL SET-ASIDES AND RESERVES WORK

- **Partial set-asides:** final rule would update the current procedures as outlined in the FAR.
 - Recommends severing acquisition into discrete components or categories rather than production runs or lots.
 - Partial set-aside appropriate when market research indicates that “rule of two” will not be met for the entire requirement (e.g., each CLIN or SIN).
- **Reserves:** final rule utilizes reserves when an acquisition for multiple award contract will be conducted using full and open competition and market research indicates that:
 - At least two small businesses could perform one part of the requirement, but requirement unable to be broken down smaller; or
 - At least one small business can perform the entire requirement, but no reasonable expectation of receiving at least two offers from small businesses.



SIZE STATUS

- Size status for multiple award contracts will be determined at the time of initial offer.
- If the contract contains multiple NAICS codes, size will be determined for each code at the time of the initial offer.
 - The offeror will be considered small for all orders subsequently issued under the different NAICS codes unless the contracting officer (in his/her discretion) requires size recertification at the order level.
- The final rule provides that the “if small at the initial offer, small for the life of the contract” concept for size eligibility all applies to program eligibility for set-aside multiple award contracts (even if contractor lost its program status during the course of the contract).
 - This concept does not apply to long-term contracts or where there is a merger or novation.



NAICS CODES

- Many solicitations have multiple NAICS codes assigned.
- Under the final rule, in assigning NAICS codes and size standards to multiple award contracts, agencies will have two alternatives:
 - To assign one NAICS code and size standard to the contract if all of the orders are expected to be classified under the same code; or
 - To divide the contract into discrete categories and assign different NAICS codes to each discrete CLIN, SIN, etc.
- Orders issued under the different categories would need to have the same NAICS code assigned to that category in the contract.



ON-RAMPS/OFF-RAMPS

- The final rule gives agencies the discretion to use “on-ramps” and/or “off-ramps” in multiple award contracts with total set-asides, partial set-asides, or reserves.
- “On-ramp” provisions allow agencies to award new contracts to a small business under a multiple award contract where some of the current awardees are no longer small as the result of a size recertification.
- “Off-ramp” provisions allow agencies to remove or terminate a contract in which the contractor has recertified its status as other-than-small and is no longer eligible to receive new orders as a small business.



LIMITATIONS ON SUBCONTRACTING

- The final rule has allowed for the determination of compliance with the limitations on subcontracting by:
 - For total or partial set-aside contracts, compliance will be determined in each period of the contract (the base term and each option period).
 - Contracting officers have the discretion, on a contract-by-contract basis, to require compliance on an order-by-order basis.
 - When an order is set aside under a reserve or a full and open multiple award contract, the contractor must comply with the limitation on subcontracting requirement on an order-by-order basis.



2013 NDAA CHANGES

- Two substantive changes to the law governing limitations on subcontracting – Section 1651 of Public Law (no proposed rule yet):
 - New limitations for service and supply contracts are now based on the total amount paid to the small business, not the cost of the contract incurred for personnel/cost of manufacturing.
 - May meet performance requirements by subcontracting to other “similarly situated” small businesses.



“SIMILARLY SITUATED” SMALL BUSINESSES

- Small business prime contractors may now meet their performance requirements by subcontracting to other “similarly situated” small businesses. (Those small under the same standard or participating in the same small business program.)
 - Prime contractors must be careful to make sure they count only those subcontractors who are participating in the same program, or who are also small for straightforward small business set-asides.
 - The new law does not allow for all small business subcontractors to fall within the exception.



CONTRACTOR TEAMING ARRANGEMENTS

- No Regulations (Coming Soon)
- GSA Treats All Team Members as Prime Contractors
 - “Team Lead” Assigned, May Be Paid Management Fees
- All Members Must Have the GSA Schedule that Member is Using – Not Necessarily All the Same (For Example: One MOBIS, One IT 70)



SBA ISSUES UNDER CTAs

- Revenue Splits?
 - Implications for Size Concerns
 - Discretion for How Revenue Can Be Assigned
- All Members Must be Eligible (Size and Status)?
- Performance of Work Issues? (Current Regulations vs. 2013 NDAA Changes)



JOINT VENTURES VS. CTAs

- **JV Itself Must Have a Schedule (No Sharing)**
 - 2 years of experience required to gain a Schedule
- **General JV Performance of Work Rules and Revenue Split Rules Apply**
- **Populated vs. Unpopulated JV**



NOVATION OF A GSA SCHEDULE

- GSA Can Be Resistant to Novations for Certain Schedules (i.e., MOBIS)
- Rules Applicable to Securing a Schedule Generally Apply (i.e., 2 years in business)
- Asset Test is KEY (which assets are being transferred with the contract)
- Stock Sale vs. Asset Sale vs. Formation of Partnership



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QUESTIONS?

Thank you for joining us today.

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