



# GC Newsletter

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## THE PENDULUM SWINGS TO OVERSIGHT, FRAUD DETECTION, AND COMPLIANCE - PART 2

The signs are in the air – are your compliance systems up to the task at hand?

The news from Washington for Federal Contractors is not good these days. The new mood in Congress is best described as “get those liars, cheats and thieves” better know as Federal Contractors. This posse mentality is pervasive in Congress. For instance, Congressman Waxman started it off with his report “Dollars, Not Sense: Government Contracting under the Bush Administration” followed by hearings that started this February, with 4 in one week. The Senate Armed Services Committee also held hearings on abusive practices in Department of Defense contracting for services and inter-agency contracting.

Congress is not alone in hunting down the bad guys. The Department of Justice has a web site dedicated to and a special Corporate Fraud Task Force aimed at uncovering contracting fraud. GAO has investigated DoD interagency contracting programs with GSA, Interior Department and NASA and found all of them lacking. The GSA IG has increased its investigations and has referred 40 GSA contractor cases to the Department of Justice for possible prosecution already this fiscal year. The number of pre-award audits for renewals has been increased and Congress has increased the funding for the GSA IG’s office over the objections of the GSA Administrator. There is additional incentive to turn in companies for non-compliance. Whistleblowers can be awarded millions of dollars for turning in contractors for misdeeds. Recent whistleblower cases involved employees turning in their employers and competitors turning each other in.

Given this hang them all mentality, what is an honest contractor to do? Have your compliance system in the best shape possible. The best defense is to aggressively review your contracting and compliance programs and institute a thorough Federal Compliance Program. Also, before acquiring another company, have that company’s GSA contract compliance reviewed before purchase, not afterwards. Otherwise your company might find itself settling with GSA for the non-compliance of that company, much like Oracle did after their SAP purchase (Oracle fined \$98 million for SAP’s noncompliance).

As noted in the book “How to Keep the Money Your company Makes, Compliance, Best Practices & other Useful Tools” by Tomi Bryan, President and General Counsel of FedLinx, a good compliance and ethics program can help reduce or mitigate the damages if your company is audited and negative findings result. As odd as it may seem, the best definition of a good compliance program is found in the Federal Sentencing Guidelines for Organizations. The Guidelines Manual established that an effective compliance and ethics program should be comprised of standards and procedures (internal controls) that are capable of reducing misconduct. Development of standards and procedures in the following areas would be necessary to meet the requirements of the Federal Sentencing Guidelines.



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- Oversight of the compliance program by the Board of Directors
- A practical screening and excluding of unethical people
- Effective training
- A process for evaluating the effectiveness of the program
- Promoting and enforcing the program through incentives
- Responding appropriately to problems and act to prevent further similar behavior.

To effectively use these requirements for a GSA Multiple Award Schedule (MAS) compliance program your company would specifically need

- oversight of the MAS compliance system by the board of Directors
- effective MAS training
- a process for evaluating the effectiveness of the implemented GSA MAS compliance system

Failure to cover these aspects adequately can leave your company vulnerable to large settlements as the government pendulum swings from the era of cooperation and commercial practices to the new era of oversight and fraud detection.

Coming -Part 2 – designing a GSA MAS compliance system.

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