

Making Compliance Compelling

How to Build a Case for your Government Compliance Program

By John Weathington

It's no doubt that a Government sales program is one of the most intelligent decisions a company can make to run a balanced and profitable business. With the upside however, comes the responsibility of running a tight compliance program. As a compliance consultant, one of the biggest mistakes I see companies make is taking unreasonable risks with their government contract. And one of the key reasons why they take these risks is because they do not make a strong enough case -- for themselves and their management -- for the proper investment in their compliance program. In this article, we'll discuss exactly what you need to consider when building your case for government compliance.

What the Government Can Do

We'll start by reminding you what the government can do if it finds

you out of compliance. It usually starts with a post-award audit by the GSA or a "contractor assisted visit" by an Industrial Operations Analyst (IOA). There is an escalating set of problems you could run into during one of these audits, if your commercial sales practices are not under control.

A **price adjustment** is the first thing they may seek. Although the MAS Advisory Panel has voted to recommend the elimination of the Price Reductions Clause, it still remains the key "gotcha" in your government contract. The best way to determine the potential cost of a price adjustment is to do an audit of your sales practices. Take a reasonable sample of orders processed in the last month, and walk through the calculation of whether or not a price adjustment would have occurred. This data will give you at least some insight into what an audit



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Michael F. Mason, partner at Hogan & Hartson, LLP says, "I want to thank you very much for your support in our GSA litigation effort. We appreciate your ability to quickly model the client's landscape, and provide insightful data investigation, discovery, and statistical analysis. Because of your incredible turnaround we were able to build a solid, data-based defense very quickly."

might cost you.

This is the least of your problems however. If the auditor senses that you don't have your act together, it could **terminate your GSA contract**. Among other reasons, this will happen if the auditor shows up at your doorstep, and your systems are such a mess that it cannot even conduct its audit. To assess the cost of this penalty, simply review the amount of GSA business your company does on an annual basis. In addition, you must add in the impact that a GSA contract termination will have on the rest of your government contracts. The sum of these two numbers will be your cost of failed compliance.

Guilty Until Proven Innocent

If the auditor senses fraud, or a gross lack of responsibility you could be **suspended or debarred**. This is a very real possibility, even if you aren't committing any fraud. It's not enough to do the right thing, you must be able to **prove** you're doing the right thing. Debarment will cost you ALL of your government business (not just GSA) for up to three years. Project three years of all sales done to the government. This is your cost of a failed audit if you're debarred.

If the Government suspects fraud, they could also proceed under the **False Claims Act**. In this case, the Government will consider each invoice a false claim, and

tack on a \$10,000 penalty plus three times the damages. Add up all of your GSA invoices, and multiply by \$10,000. Even though the treble damages number isn't involved, this is a good gauge to use for compliance cost consideration under this Government remedy.

There are other remedies that are more severe, like criminal prosecution under the False Statements Act, which should be considered, but for all intents and purposes, these are the main things to be worried about.

The Cascading Effect of Non-Compliance

Unfortunately, it doesn't stop there. With the exception of the most minor GSA infractions, government non-compliance is due to the lack of internal control over commercial sales practices. This will have far-reaching effects into other compliance mandates including Sarbanes-Oxley and data privacy (i.e. HIPPA). Recent research from the META Group (now part of Gartner) for PriceWaterhouseCoopers showed that the average cost of one compliance failure, for a company whose revenues were greater than \$1 billion, was a staggering \$81 million. Take 8 to 10 percent of your total annual revenue as a conservative number for how much one compliance failure can cost.

The Biggest Cost of Non-Compliance

Even with this staggering number, you may be surprised to hear that there's an even bigger cost to your company, for not having your commercial sales practices under control. It's the opportunity cost of your own inefficiencies. Companies with poor commercial sales practices hemorrhage money annually, in some cases far greater than 10% of their revenues.

The smartest companies approach compliance as an improvement effort. In this way, instead of "spending" money on compliance, you're making an intelligent investment in improved commercial sales practices. And as a nice side benefit, you'll make the Government happy by staying in compliance. And a happy Government auditor makes a happy government contractor.

In Summary

Staying in compliance is required to maintain a good relationship with the Government, however building a case for compliance is required to get the proper funding for an effective compliance program. Although you could take the approach of explaining all the nasty things the Government can do if they don't like your practices, the better approach is to invest in improving your commercial sales practices. Get started today by launching a project to get your commercial sales practices under control. If you send me an email introducing yourself, I'll send you a free template to get you started.