

Inspector General Oversight of U.S. General Services Administration Contracts¹

Introduction

The U.S. General Services Administration (GSA) has two primary functions: to manage federal real estate and to facilitate the purchase of goods and services by federal agencies through government contracts. GSA manages more than 375 million square feet of property, and approximately \$50 billion goes through GSA contracts each year.

The GSA Office of Inspector General (OIG) provides oversight of GSA operations and programs, including GSA's contracts. This paper discusses: (1) GSA and the role of the OIG, (2) the OIG's contract audit program, (3) OIG False Claims Act cases, (4) the OIG's Federal Acquisition Regulation (FAR) Mandatory Disclosure Rule Program, and (5) best practices for working with the OIG.

Background

General Services Administration

President Harry Truman established GSA on July 1, 1949, to streamline the administrative work of the federal government.² Since then, the GSA has served as the federal government's designated agency for the procurement of goods and services to more efficiently leverage the government's buying power. As such, the GSA manages the Multiple Award Schedules (MAS) program, which simplifies procurement for the federal government.³ Under the MAS program, federal agencies can buy a wide range of commonly used commercial products and services at volume discount prices using simplified buying procedures. With almost 15,000 contracts, the MAS program generates more than \$32 billion in sales annually and is the largest contracting program in GSA. In the first seven months of fiscal year 2017, the MAS program generated \$23.8 billion in sales.

The Role of the Office of Inspector General

The GSA OIG is a statutorily created independent organization whose mission is to detect and deter waste, fraud, abuse and misconduct in GSA operations, programs and personnel, and to promote economy and efficiency.

¹ The statements in this paper are not intended to and do not create any substantive rights in any third party.

² See generally www.gsa.gov at Background and History.

³ 48 C.F.R. § 8.402.

GSA OIG is one of the original 12 OIGs created by the Inspector General Act of 1978 (IG Act).⁴

The GSA Inspector General is appointed by the President subject to Senate confirmation. By the terms of the IG Act, the OIG is “an independent and objective unit” with responsibility for conducting audits and investigations relating to the programs and operations of the agency; recommending policies to promote the effectiveness of the agency, and keeping the agency head and Congress fully and currently informed about problems and deficiencies related to the agency.

The OIG has three primary offices that perform oversight functions: the Offices of Audits, Inspections and Forensic Auditing, and Investigations. These offices share a common goal, to help improve GSA and save American taxpayer money.

OIG Contract Audits

Overview

The OIG performs independent and objective audits to improve the effectiveness and efficiency of GSA’s management and operations. These audits focus on GSA’s programs, internal controls, information technology infrastructure, and compliance with federal laws and regulations.

The OIG also provides important oversight of the MAS contract program through contract audits. The two main types of MAS contract audits include:

- Preaward audits which provide GSA contracting officials with information to use when negotiating fair and reasonable GSA contract prices, and
- Postaward audits which examine GSA contractors’ adherence to contract terms and conditions.

The OIG’s contract audit findings are provided to MAS contracting officers for their use in negotiating awards and settlements.

If a preaward or postaward audit finds suspicious activity, the matter may be referred to the Department of Justice (DOJ) for consideration. The OIG makes criminal and civil referrals to DOJ or other authorities for prosecutive and litigative consideration.

⁴ See *generally* Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101 (1978) (codified as amended at 5 U.S.C.A. app. 3, § 2).

Contract Audits Process

Preaward Audits

The OIG performs preaward audits before GSA initially awards or extends a MAS contract.⁵ Most of the OIG's preaward audits occur when GSA is extending a contract. Preaward audits examine the pricing information a vendor provides in its contract proposal and provide GSA contracting officers with information about the accuracy of and any deficiencies in a vendor's pricing proposal. Contracting officers then use the audit report findings to negotiate better prices for the federal government under the MAS contract.

The objectives for all preaward audits are to determine whether the contractor: (1) disclosed and submitted accurate, current, and complete information in the Commercial Sales Practices (CSP);⁶ (2) maintains sales monitoring and billing systems that ensure proper administration of the price reduction and billing provisions of the GSA contract;⁷ and (3) adequately accumulates and reports schedule sales for Industrial Funding Fee (IFF) payment purposes.⁸ Two additional objectives apply to MAS contracts that offer services. The OIG audit determines whether the contractor: (4) assigns employees to work on GSA task orders who are qualified for their billable positions and (5) adequately segregates and accumulates labor hours, material costs, and other direct costs on time and material task orders.

GSA's recent implementation of the Transactional Data Reporting (TDR) rule eliminates the requirement for MAS contractors to provide disclosures and track sales and discounts, as required by the CSP format and the Price Reductions clause, in exchange for transactional sales data.⁹ Participation in GSA's TDR program is now optional. To date, this new rule has not affected the OIG's preaward audit workload. The OIG is auditing GSA's implementation of TDR and evaluating how TDR could affect OIG contract audits in the future.

⁵ MAS contracts are awarded for a five-year base period with three five-year options. Therefore, these contracts can be effective for up to a 20-year period.

⁶ GSA requires the offeror to disclose certain information in a Commercial Sales Practice Format, known as the offeror's CSPs. 48 C.F.R. § 515.408. The offeror must disclose information that is "current, accurate, and complete." *Id.*

⁷ MAS contracts include the Price Reductions clause (PRC), which requires MAS contractors to provide the Government with any discounts or improvements to the contractor's commercial pricing during the contract period. 48 C.F.R. § 552.238-75.

⁸ MAS contractors are required to report their GSA Schedule sales to GSA and remit a certain fee, the Industrial Funding Fee, to GSA based on the dollar value of those sales. 48 CFR §552.238-74.

⁹ General Services Administration Acquisition Regulation (GSAR); Transactional Data Reporting, 81 Fed. Reg. 41104 (June 23, 2016).

Postaward Audits

The OIG performs postaward audits after a MAS contract is awarded to assist contracting officers in administering contracts. Postaward audits seek to determine the propriety, validity, and reasonableness of reimbursable cost submissions; the accuracy of contract information provided by the contractor; or compliance of the contractor with contract provisions. Limited scope overbilling reviews are a type of post award audit. Contracting officers typically use the audit report findings to recover money or to reopen contract negotiations.

The objectives for postaward audits vary, based on the information the OIG has about the contract. Postaward audits may be prompted by several factors such as a request from a GSA contracting officer, GSA's Office of General Counsel, or DOJ; a contract with a history of potential contract violations such as overbillings, IFF nonpayment, or unqualified labor. Postaward audits can lead to a referral to DOJ for suspicion of civil False Claims Act violations or criminal fraud investigations.

The OIG's Selection of Contracts to Audit

Although there are about 15,000 MAS contracts, the OIG typically audits 40-50 contracts per year. The OIG develops a contract audit plan on an annual basis after receiving input from and collaborating with both GSA and OIG management officials. Some factors that OIG considers while developing the contract audit plan include the dollar value of annual sales for each MAS contract, contract audit requests from GSA officials, recent OIG reviews of MAS contracts, and GSA industrial operations analyst reports.¹⁰ The OIG typically seeks to audit a mix of contracts that offer products and services throughout the MAS program.

Postaward audits tend to be performed after a problem has been identified in a contract. Postaward audits may also be initiated in advance of a contract extension based on preaward audit findings, at the request of a contracting officer, and in assistance of False Claims Act cases.

Audit Results

The OIG gives contract audit findings to MAS contracting officers for their use in negotiating awards and settlements. OIG contract audits are a key control on pricing disclosures. When contracting officers use the audits effectively, they can generate significant savings for the federal government.

¹⁰ GSA industrial operations analyst review contractors' records to verify contractual compliance and produce reports of their findings, as permitted by GSA MAS contract clause 552.215-71 (Examination of Records).

Between fiscal years 2014 and 2017, the OIG issued 237 contract audit reports. These reports recommended cost savings that are presented in the table below. This includes recommendations that funds be put to better use, which is how much money could be saved if the OIG’s audit findings and recommendations are implemented by contracting officers. It also includes questioned costs, which is money that should not have been spent such as overbillings, unreported price reductions, or refunds due to the government.

Recommended Funds Be Put to Better Use	\$2,525,279,097
Recommended Questioned Costs	\$97,631,304

Common issues found in these reports include that contractors:

- Did not submit accurate, current, and complete information;
- Did not maintain sales monitoring and billing systems that ensure proper administration of the price reduction and billing provisions of their MAS contract;
- Did not adequately accumulate and report schedule sales for IFF payment purposes or correctly calculate and submit their IFF payments;
- Overcharged or overbilled GSA’s federal government customers;
- Did not comply with price reduction provisions;
- Did not comply with the Buy American Act or Trade Agreement Act;
- Assigned employees who were unqualified for the billable positions on GSA schedule task orders; and
- Did not adequately segregate and accumulate labor hours, material costs, and other direct costs on time and material task orders.

Audit findings such as these can result in further audit work, a referral to the OIG’s investigative office, or a referral to DOJ. For overbillings, the GSA MAS contracting officer may attempt to recover money.

OIG False Claims Act Cases

False Claims Act, 31 U.S.C. §§ 3729-3733

The OIG works collaboratively with DOJ on False Claims Act cases filed under the False Claims Act.¹¹ The False Claims Act provides for a private person to bring a “civil action for a violation of 31 U.S.C. § 3729 for the person

¹¹ 31 U.S.C. §§ 3729-3733.

and for the United States Government.”¹² The False Claims Act also provides for civil penalties plus three times the amount of damages which the government sustains.¹³

The False Claims Act provides liability for any person who knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval or knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.¹⁴ The terms knowing and knowingly are defined to mean a person who: (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information; and require no proof of specific intent to defraud.¹⁵

The False Claims Act requires that the government must either: (A) “proceed with the action, in which case the action shall be conducted by the Government; or (B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.”¹⁶ If the Government intervenes in the action, the Government “shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action.”¹⁷ At the point of intervention or declination, the Court usually unseals the case.

The government has the right to dismiss the action and settle the action under certain conditions.¹⁸ If the Government declines the action, the relator may proceed with the lawsuit.¹⁹ However, the Government can intervene at a later date upon a showing of good cause.²⁰

The OIG’s Role in False Claim Act Cases

Most of the False Claims Act cases relating to MAS contracts focus on a government contractors’ CSPs and violations of the PRC. DOJ provides a copy of the False Claims Act complaint and a disclosure statement to the OIG when the complaint’s allegations implicate a MAS contract or involve any other GSA contract issues. The OIG assigns an attorney, investigator, and auditor to work with DOJ on investigating the merits of the allegations in the complaint. Pursuant to authority delegated from GSA to the OIG, the OIG must concur in

¹² 31 U.S.C. § 3730(b).

¹³ 31 U.S.C. § 3729(a).

¹⁴ Id.

¹⁵ 31 U.S.C. § 3729(b).

¹⁶ 31 U.S.C. § 3730(b)(4).

¹⁷ 31 U.S.C. § 3730(c).

¹⁸ Id.

¹⁹ 31 U.S.C. § 3730(c)(3).

²⁰ Id.

DOJ's decision to intervene, decline, or enter into settlement in a False Claims Act case.

OIG Case Settlements and Recoveries

Since 2014, the OIG has recovered more than \$250 million through settlements from its False Claims Act cases. The OIG's False Claims Act case matters have included:

- Failure to disclose discounting practices and provide proper discounts as required by MAS contracts;
- Failure to submit current, accurate, and complete CSP information;
- Price Reductions clause violations;
- Overbillings;
- Trade Agreements Act violations; and
- Misrepresentation of federal small business contract eligibility.

In a recent case based on a qui tam, a settlement resolved claims that a MAS contractor provided false information about the discounts it gave commercial customers for its software licenses and maintenance services at the time the contract was negotiated and when it was extended twice. Additionally, the settlement resolved claims that the MAS contractor violated the Price Reductions clause in the contract by not providing government customers with additional discounts when commercial discounts increased.

In another recent case based on a qui tam, a settlement resolved allegations that a vendor and reseller made false statements to the government in connection with the sale of the vendor's information technology products and services under the reseller's MAS contract. These false statements allegedly concealed the companies' commercial pricing practices and enabled the companies to overcharge the government for the vendor's products and services for six years.

In a recent case based on OIG postward audit findings, a settlement resolved allegations that a MAS contractor violated the Price Reductions clause in its information technology services contract. As a result, government customers were allegedly overcharged.

FAR Mandatory Disclosure Rule Program

The Federal Acquisition Regulation (FAR) requires federal government contractors to disclose to the OIG certain violations of criminal law, violations

of the civil False Claims Act, and significant overpayments.²¹ When the mandatory disclosure rule was made final at the end of 2008, the OIG implemented a program to process contractor reports. Since 2008, the OIG has received more than 150 disclosures and recovered more than \$170 million under this program.

FAR Mandatory Disclosure Rule

The relevant language for the FAR Mandatory Disclosure Rule is found in 48 C.F.R. 52 203-13(b):

(3)(i) The Contractor shall timely disclose, in writing, to the agency Office of Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed ---

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).

In addition, suspension and debarment considerations in FAR 9.406-2 and FAR 9.407-2 include:

Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of –

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(B) Violation of the civil False Claims Act (31 U.S.C. 3729-3733); or

(C) Significant overpayment(s) on the contract, other than overpayments resulting from the contract financing payments as defined in 32.001.

OIG's Internal Procedure for FAR Mandatory Disclosures

²¹ Contractor Business Ethics Compliance Program and Disclosure Requirements, 73 Fed. Reg. at 67,064, 67,066 (Nov. 12, 2008).

The OIG has internal procedures to process, evaluate, and act on mandatory disclosures and created a website for contractor self-reporting. Each disclosure case is staffed with an attorney, an auditor, and an investigator. The website for contractor self-reporting is www.gsaig.gov. Upon clicking the green button “FAR Contractor Reporting” on the right side of homepage, the website provides the following instructions:

Make a Report

Once you have submitted your report, we will automatically send you a copy of the information you submitted as confirmation for your records.

This form is provided as a convenience to allow contractors to comply with the reporting requirements in the December 12, 2008, FAR amendment, [73 Fed. Reg. 67064](#) . Specifically, contractors may use this form to satisfy the requirement that they notify, in writing, the agency (GSA) Office of the Inspector General, whenever the contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of the civil False Claims Act or a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations in connection with the award, performance, or closeout of a contract or any related subcontract. The individual completing this form must be an authorized representative empowered to speak for the company. When you submit this electronic form an email will automatically be generated to send you a tracking number and a copy of what you have submitted. The information you are providing is not deemed to be submitted until you have received that confirmation email. If you wish to provide information that does not fall within these guidelines, please visit the [Inspector General Hotline](#).

The form requests information such as: (1) company name and business address; (2) the disclosing party’s relationship to the company; (3) contract information; (4) an incident report; and (5) any other government entities the disclosing party is notifying about this incident. An incident report generally includes the estimated amount of loss, a description of the loss, the initial incident date, whether the incident is ongoing, the date the contractor learned of a potential violation, and “a complete description of the facts and circumstances surrounding the reported activities, including the evidence forming the basis of this report, the names of the individuals involved, dates, location, how the matter was discovered, potential witnesses and their involvement and any corrective action taken by the company.”

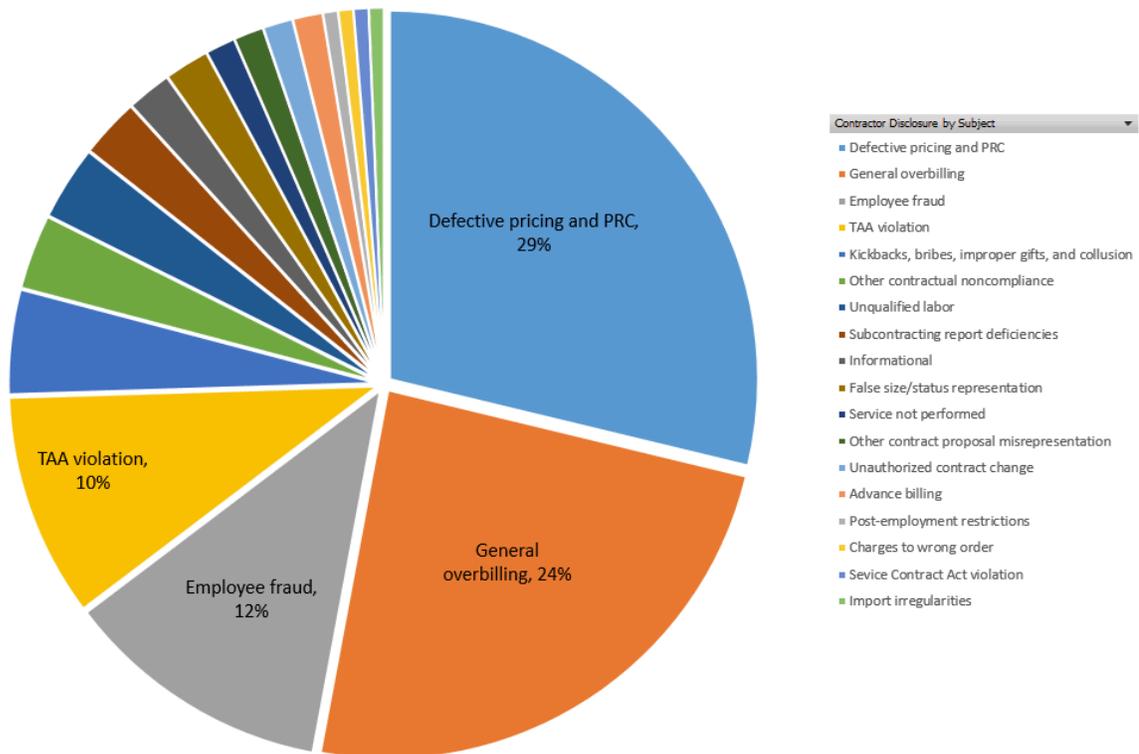
For each disclosure made to the OIG, a copy is provided to the responsible contracting officer, DOJ, and the Office of Inspector General of other affected agencies. OIG makes an effort to keep contractors up-to-date on the status of the disclosure, starting with an acknowledgement letter after receipt of a disclosure and an in-person meeting to talk about details of the reported conduct. After this meeting, the OIG generally requests further details as necessary to better understand the nature of the conduct or verify the amount owed the federal government. These requests may include documentation of facts and figures, explanations of calculation methods, or interviews of company employees who can explain how problems occurred and

whether there are any mitigating factors that will prevent future problems. As explained below, the OIG has noticed some best practices by contractors.

OIG audit, investigative, and attorney staff members jointly make a determination as to what actions, if any, are warranted. If they determine that an amount is owed to the federal government, the OIG’s typically makes a recommendation to the GSA contracting officer responsible for the contract that is the subject of the disclosure. If the GSA contracting officer concurs with the OIG’s recommendation, the GSA contracting officer will issue a demand letter to the contractor requesting payment to the federal government. Once the government receives payment from the contractor, the OIG provides a closure letter to the contractor.

Examples of matters disclosed include inflated sales reports, defective pricing, pricelist inaccuracies, inflated time reporting, Trade Agreements Act non-compliance, and unreported price reductions. The relative frequency of the types of disclosures from 2008 through 2017 can be seen in the chart below.

Subject Matter of Disclosures, 2008 - 2017



Why Contractors Should Disclose

Disclosures are legally required, and a failure to disclose can lead to suspension and debarment. A benefit of making a disclosure is the contractor has the opportunity to conduct its own internal investigation and present its side of the story to the OIG, without the distraction of an OIG audit or DOJ

litigation. During the disclosure process, a contractor can provide a preliminary finding to the OIG, and the OIG will stand by for a reasonable period while the contractor completes its internal investigation.

Best Practices for Working with the OIG

Audits and Investigations

Contractors are encouraged to respond promptly and diligently during an audit. The OIG has found that the contractor's cooperation during an audit averts government costs and delays. The following are contractor practices that help to make the audit efficient and effective for both the government and the contractor:

- Make contractor employees available to answer inquiries;
- Provide contact information for contractor employees who are knowledgeable about the contractor's systems and data;
- Provide adequate explanations of data systems;
- Submit requested and relevant data;
- Be prepared to provide documentation if requested and do not try to conceal information; and
- Respond promptly to inquiries and let auditors know if there will be any delays.

FAR Mandatory Disclosure Rule Program

During the course of processing disclosures, the OIG has seen contractor practices that are particularly helpful in resolving disclosures efficiently. These "best practices" include:

- Providing timely and thoroughly documented factual information with the initial disclosure (and providing an update to the disclosure as soon as an internal investigation is complete);
- Including a description of the conduct that occurred, an explanation of the date range, how the conduct was discovered, its consequences, remedial action taken, an assessment of the amount owed to the government, and an explanation of how the amount was calculated, including any legal conclusions used for the calculation;
- Identifying relevant issues and witnesses;
- Keeping the OIG informed on the progress of an internal investigation and the collection of additional materials and information; and
- Erring on the side of over-communicating.