

GSA Schedule and Commercial Item Contracts

Wiley's attorneys are experienced in all areas relevant to the procurement of commercial items under Federal Acquisition Regulation (FAR) Part 12, from initial commerciality determinations to defending the reasonableness of the price of a commercial item. Wiley's attorneys have been advising clients on the unique rules governing commercial item procurements since those rules were introduced more than two decades ago. We are constantly tracking regulatory developments related to the acquisition of commercial items and are well positioned to advise on any changes in this area. Our team also has experience supporting clients from a wide range of commercial industries, including cloud computing and other IT products and services, professional services, recruiting/HR, healthcare, pharmaceuticals, real estate, retail, hospitality and others.

Wiley's attorneys are particularly well-versed in the intricacies of U.S. General Services Administration (GSA) Multiple Award Schedule (MAS) contracts, VA Schedule contracts, and other Government-Wide Acquisition Contracts (GWACs). Wiley's attorneys regularly assist clients in navigating through the most complex, highest risk areas relevant to Schedule contractors, —including issues relating to Commercial Sales Practices (CSP) disclosures, Transactional Data Reporting (TDR), as well as compliance with the Price Reductions Clause (PRC) and the Trade Agreements Act (TAA).

Representative experience includes:

- Successfully representing a leading IT and business consulting services firms in challenging a federal agency's attempts to procure commercial products and services on terms and conditions that were inconsistent with customary commercial practice, the Federal Acquisition Streamlining Act, and FAR Part 12. See *CGI Fed. Inc. v. United States*, 779 F.3d 1346 (Fed. Cir. 2015)
- Acting as a trusted adviser to commercial companies looking to enter the federal market, helping commercial companies develop policies, procedures and training programs needed to meet the unique challenges of doing business with the federal government.
- Supporting numerous clients in connection with the negotiation, award, and extension or renewal of GSA Schedule contracts, including providing advice in connection with CSP disclosures and PRC negotiations.
- Representing multiple clients in connection with audits and investigations involving GSA Schedule contracts, including Contractor Assist Visits, pre-award audits by the GSA Office of Inspector General (OIG), as well as investigations by GSA OIG and the Department of Justice.

- Assisting a number of different clients in submitting and resolving mandatory disclosures involving GSA and VA Schedule contracts, including successfully resolving disclosures relating to defective CSP disclosures, PRC non-compliance, and delivery of non-TAA products.
- Regularly representing clients in bid protests, claims and disputes, and terminations involving GSA Schedules and other commercial item contracts.
- Advising clients regarding the terms and conditions that apply to contracts for commercial items under FAR Part 12, as well as advising clients regarding the unique requirements that apply to the U.S. Department of Defense (DOD) when it uses commercial item contracts for weapons acquisition programs.
- Assisting clients with negotiating commercial item terms and conditions in prime contracts and subcontracts, including negotiations regarding “flowdowns” applicable to commercial item subcontracts.
- Assisting clients in performing commercial item determinations (CIDs) for a wide variety of commercial products and services, including assisting clients in documenting determinations and advocating for commercial item determinations to relevant agencies and prime contractors.