

STATEMENT OF
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U.S. GENERAL SERVICES ADMINISTRATION
BEFORE THE PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
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Mr. Chairman, Members of the Subcommittee, my name is Kathleen M. Turco. I am the Acting Deputy Administrator of General Services. I am pleased to have this opportunity to appear before you today to discuss the General Accountability Office's (GAO) recent report titled "Thousands of Civilian Agency Contractors Abuse the Federal Tax System with Little Consequence." My testimony will address, in order, the issues that you raised in your letter of March 3, 2006.

Mr. Chairman, I know you are interested in what can be done to be sure that tax-delinquent General Services Administration (GSA) contractors are identified and subjected to the Federal Payment Levy Program. The answer is that many things can and have been done. As I will specifically address in my testimony, GSA has participated with the U.S. Department of the Treasury in the Federal Contractor Tax Compliance Task Force to identify several key automated systems changes that have enhanced the accuracy of the information that we presently have regarding Federal contractors. We also are working with our GSA SmartPay® vendors to explore the options for purchases from tax debtors where the GSA SmartPay® purchase card is used as a payment mechanism.

We believe that the issues you raise in your March 3 letter are very important and very complex. Progress on understanding and resolving the issue of Federal contractors who are tax debtors must be measured and precise to ensure accurate reporting of tax information and an appropriate response that furthers the interests of the Department of the Treasury and the Federal acquisition community. We believe that we are making such progress and are happy to present this information to you.

First, I would like to address your question related to the products and services that are available on the Multiple Awards Schedule, also known as MAS, as well as the scope, size, and use of the MAS program.

The MAS program provides Federal agencies with a simplified process of acquiring commonly used supplies and services in varying quantities while obtaining volume discounts. MAS indefinite-delivery contracts are awarded to commercial firms using competitive procedures. The MAS contractors provide supplies and services at stated prices for a given period of time, for delivery within a stated geographic area, such as the 48 contiguous states, the District of Columbia, Alaska, Hawaii, and overseas. GSA seeks to obtain pricing equal to or better than that given to the contractors' most favored customers, recognizing that the terms and conditions of commercial sales vary and there may be legitimate reasons why the best price is not achieved. In addition, GSA encourages agencies to seek price reductions and award work to the contractors that provide the best value.

Currently, there are 17,495 MAS contracts in place covering the following services and products:

Services

- Information Technology
- Facilities Maintenance and Management

- Communications (languages, public relations)
- Professional Engineering Services
- Financial and Business Solutions
- Furniture (interior design, relocation, installation, etc.)
- Javits Wagner O'Day eligible products (Purchase from People Who Are Blind or Severely Disabled)
- Human Resources
- Law Enforcement, Security, Emergency Preparedness
- Logistics
- Management Consulting
- Environmental Services
- Travel and Transportation
- Vehicle (leasing, rental, maintenance, repair)

Products

- IT hardware and software
- Tools
- Paper Products
- Office Supplies
- Vehicles
- Recreational Equipment (including trophies/awards)
- Law Enforcement Equipment
- Copiers

For fiscal year 2005, approximately \$33.8 billion worth of sales were recorded through the MAS program.

The second issue I'd like to touch on is the process GSA follows to make responsibility determinations based on the representations and certifications application submitted by contractors. Prior to the award of a contract, GSA determines whether prospective contractors are "responsible" in accordance with the Federal Acquisition Regulation (FAR). The process GSA follows is specifically governed by FAR 9.104-1(a), which requires that in order to be deemed responsible, a prospective contractor must:

- Have adequate financial resources;
- Be able to comply with the delivery or performance schedule;
- Have a satisfactory performance record;
- Possess a satisfactory record on integrity and business ethics;
- Possess the necessary organization, experience, technical skills, accounting and operations oversight; and
- Have the production, construction and/or technical equipment and facilities to perform the work required.

A pre-award survey is conducted if the Contracting Officer has reason to believe one or more of the aforementioned factors are in doubt. Per FAR 9.106-1, a pre-award survey is

not required for the acquisition of commercial items. However, the Contracting Officer must still determine financial responsibility even for the acquisition of commercial items.

One method of determining financial responsibility by GSA Contracting Officers is to review and evaluate the latest company financial statements. Other facts that could be considered is how long the company has been in business, any bankruptcies during the company's lifetime, bond rating by Moody's or Standard and Poor's, etc..

If a pre-award survey is needed, the Contracting Officer submits a Standard Form (SF) 1403, *Pre-award Survey of Prospective Contractor* to GSA's Finance Office. GSA Credit and Finance personnel examine technical capability, production capability, quality assurance capability and financial capability, including a check of the accounting system. For contracts involving the production of commercial items, GSA sometimes uses GSA Form 353, *Performance Evaluation and Facilities Report*. This evaluation examines monthly production capacity; production equipment; production methods; management; inspection; quality assurance procedures; packaging, packing and marking; and performance history.

An overall responsibility determination also is dependent on contractor representations and certifications. Contractors provide these FAR required statements by using the Online Representations and Certifications (ORCA) system. The Contracting Officer is responsible for reviewing the representations and certifications to be sure that they do not present information that would impede an affirmative finding of contractor responsibility.

Another issue raised in your letter is the integration of ORCA and the Central Contractor Registration (CCR) as part of the Business Partner Network, including GSA's management of CCR and efforts related to taxpayer identification number validation. The Integrated Acquisition Environment was established as one of twenty four e-government initiatives. Its mission is to provide a shared services environment for those functions which are common to all Federal acquisition activities. One of these is the CCR, which is the single point of registration for those wanting to do business with the Federal Government as prescribed in the Federal Acquisition Regulation.

This system allows us to collect basic vendor information one time and share it among all agencies. It collects addresses, business lines, socio-economic data, points of contact and electronic funds transfer (EFT) information for payment in one place, eliminating the need for registrants to find, enter and maintain multiple Federal agency databases. Registrants are responsible for registering and maintaining their own data. We require an annual revalidation to maintain the active status necessary to receive awards and payments. As of March 3, 2006, there are currently 413,000 active registrants.

Wherever possible, data is validated by the authoritative source. Since April 2005, registration information is passed to the Small Business Administration (SBA) in real time to validate certifications for 8(a), HUBZone and Small Disadvantaged Business. The employee and revenue values provided by the registrant are also used by the SBA to calculate business size for each North American Industry Classification System (NAICS)

code to assist contracting officers. Contracting Officers are still responsible to make a size determination on each contract based on its characteristics.

On October 30, 2005, the CCR program began validating the Taxpayer Identification Number (TIN) and Taxpayer Name of each new registrant and updating existing CCR registrants with Internal Revenue Service (IRS) records. The TIN matching process is a joint effort between the General Services Administration (GSA), the Department of Defense, and the IRS to improve the quality of data in Government acquisition systems. All CCR registrants were informed that new or modified records would trigger the IRS validation in CCR registration. In order to complete CCR registration and qualify to bid for Federal Government contracts or apply for Federal grants, the TIN and Taxpayer Name combination provided in the IRS Consent Form screen must match exactly to the TIN and Taxpayer Name used in Federal tax matters. It is now averaging 1-2 business days to validate new and updated records prior to becoming active in the CCR database. If the data does not match, the registrant is provided an IRS helpdesk number to call.

Another part of the Business Partner Network of systems is ORCA, which I previously mentioned. This system extracts CCR information from the database and enters it into appropriate contract clauses to eliminate re-keying by the vendor. The appropriate individual then validates its accuracy. Subsequent solicitations will use this data unless an offeror provides an exception for that solicitation. Tax evasion is covered in one multi-purpose clause covering fraud, embezzlement, tax evasion and other areas; only 69 records reflected an affirmative response to this question. This clause also provides information on penalty for misrepresentation.

I'd now like to briefly address GSA's ability to determine whether federal contractors have been indicted for or convicted of tax evasion as part of the Responsibility Determination.

Every MAS solicitation contains clause, 52.212-3 *Offeror Representations and Certifications—Commercial Items*. In this clause, the offeror certifies, to the best of its knowledge and belief, whether the offeror and/or any of its principals—within a three-year period preceding this offer, have been convicted of or had a civil judgment rendered against them for the following:

commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local Government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property.

This information may be obtained directly from the contractor or from the ORCA system.

Another issue you raise in your letter is the status of ongoing work related to GSA by the Federal Contractor Tax Compliance Task Force and especially the effort to be sure that

purchase card payments are subjected to levies pursuant to the Federal Payment Levy Program.

The purchase card is a charge card issued as part of GSA's SmartPay® Program which provides commercial purchase card services to approximately 350 Government agencies and organizations. The program enables agencies to avoid an estimated \$1.4 billion in administrative processing costs annually on relatively low-cost purchases through the use of a streamlined, commercial buying process. These services are provided through five contractor banks. GSA obtains summary level data on purchase card transactions under this program, for purposes such as monitoring payments. We do not receive detailed, transaction-by-transaction information.

Since May 2005, at your request, GSA actively participates in the Federal Contractor's Tax Compliance (FCTC) Task Force Purchase Card Subgroup. As a task force participant, GSA explored potential approaches to address the collection of outstanding tax debts through the GSA SmartPay® Program purchase card business line, in coordination with officials from the Department of the Treasury's Internal Revenue and Financial Management Services, and the Defense Finance and Accounting Service, and the Office of Management and Budget.

GSA participated in subsequent FCTC subgroup meetings in June, October and November 2005, as well as numerous phone conversations on this matter. For the November meeting, GSA arranged for the GSA SmartPay® contractor banks, as well as representatives from the major charge card associations, to meet with FCTC officials to discuss the feasibility of various approaches to the levy issue.

Since neither GSA, nor the Federal Agencies using the GSA SmartPay® purchase card, pay the individual merchants directly (a range of banks both within and without the GSA SmartPay® Program make these payments in coordination with the charge card associations and other entities), the idea of government agencies withholding payments from individual merchants does not appear workable.

Alternative approaches such as requiring the banks to withhold funds from individual merchants were also rejected as the GSA SmartPay® banks informed us that their automated systems do not possess this functionality. The banks also raised issues of liability for erroneous levies; legal concerns regarding levy authority; challenges associated with determining a specific vendor's identity within multiple, related charge card systems; anticipated costs associated in changing commercial systems; the need to change card association agreements in place with a merchant community numbering in the millions, etc. This matter is further complicated by the fact that the bank that issued the card, and the bank that issues the payment to the merchant for the transaction, are often different banks.

The industry advises that a third alternative, involving "blocking" transactions such that government purchase cards cannot be used with specific merchants until their tax delinquencies are resolved, is not possible given the current infrastructure. While

industry can “block” transactions, it can do so only very broadly. For example, all hardware stores could be blocked, as opposed to one specific hardware store.

While Government charge card business is substantial, it is relatively small in comparison to world-wide commercial and individual card use. For example, MasterCard volume for the first six months of calendar year 2005 equaled \$556 billion. VISA’s annual transaction volume is reportedly \$3 trillion dollars annually, as compared to a total of \$24 billion total for all GSA SmartPay® product lines, encompassing purchase, travel and fleet charge cards, for all of fiscal year 2005. Industry expressed concerns regarding the potential costs for commercial system infrastructure changes solely to satisfy government-unique needs.

Under the GSA SmartPay® Program, GSA contracts for commercial charge card services. We are concerned that the levy issue is outside the scope of the current negotiated contracts and may actually be a broader banking industry issue. We are also concerned that future actions on the levy issue take into account any potentially negative impact on the small business community, and that if a requirement for the banking industry to levy charge card payments is mandated, that a funding strategy be identified to implement such a change.

Given the significant administrative processing cost savings accruing to agencies from purchase card use, we also believe any levy process needs to be largely transparent to the user in order to avoid discouraging use of the card. In fiscal year 2005 alone, the top 10 agencies in the program transacted approximately 26 million purchases with an average value of just under \$700. Most purchase cardholders are non-procurement personnel who use the card in the course of delivering mission services to the public and other customers. Loss of the streamlined processes the card affords, especially for so-called “micro-purchases” under \$2,500, could inadvertently discourage card use and loss of the attendant card use benefits the Government currently enjoys. Movement of these purchases away from cards in order to support a levy process could exacerbate current workload problems caused by procurement personnel staffing shortages as the primary vehicle for small purchases moves back to purchase orders and other traditional, paper intensive processes.

Another possible solution under discussion in the FCTC is to flag the CCR records as “Debtors” and issue new policy that the card cannot be used to place orders above the micro-purchase threshold with firms who have this flag. These orders would have to go through the order/invoice process in order to utilize the levy procedure. While this may be a compromise, the implementation needs to be worked out, as many ordering activities do not check or have access to the CCR under current procedures. This process would also require a new systems interface between Treasury and CCR in order to keep the flag current.

We also understand that in 2004, section 6331 of the Internal Revenue Code (26 U.S.C. 6331) was amended to allow the Treasury to continuously levy up to 100 percent of a federal vendor payment to collect outstanding tax obligations. Under previous law, Treasury was authorized to continuously levy only up to 15 percent of specified federal

payments. Many Federal payments, such as salary, retirement, and benefit payments, are regularly recurring payments that can be continuously levied until the outstanding tax obligation is satisfied. Vendor payments, however, are not regularly recurring payments and present fewer opportunities for collection. A technical correction to this new authority allowing Treasury to continuously levy up to 100 percent of all vendor payments would be another step toward reducing the tax indebtedness of Federal vendors.

At GSA, we take the issue of unpaid contractor taxes very seriously. We continue to participate in the subgroup looking for practical solutions. For example, we are examining the feasibility of asking competitors for the successor GSA SmartPay® contracts to identify potential alternative courses of action to address the levy issue. However, at this point we cannot predict what alternatives industry will propose, if asked, and how workable or cost-effective these approaches may be. We expect to award these new contracts during fiscal year 2007, with implementation in late November 2008.

Finally, I'd like to address the issue of whether Federal contractors who abuse the federal tax system should be barred from doing business with the Government or, if they are currently doing business with the Government, should be suspended or debarred.

Under current law and regulation the focus of debarment is to exclude companies that are presently not responsible. Tax evasion is a recognized cause for debarment. Similarly, bribery, falsification of records, embezzlement, committing a fraud or criminal offense in performing a Government contract are causes for debarment. The existence of a cause for debarment does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors must be considered. The current regulation establishes a presumption that certain crimes will result in debarment, but it is a rebuttable presumption. It should be kept in mind that debarment is not a punishment for a crime but rather a measure designed to protect the Government from dealing with non-responsible vendors. It is the debarring official's responsibility to determine in each case whether debarment is in the Government's interest. Current law and regulation set an appropriate balance by granting discretion to the debarring official to measure the nature and seriousness of the offense.

GSA will continue to work with our fellow agencies to explore additional options to address the serious matter of contractors who do not pay their taxes. Thank you for providing this opportunity for GSA to appear before you. I will be happy to answer any questions you may have.

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