

# Compliance Monitors 101

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**COMPLIANCE WEEK** **2013**  
POWERFUL INSIGHTS, PRACTICAL IDEAS, REAL SOLUTIONS

#CW2013

# Compliance Monitors 101

## ABOUT ME:

Adelle Elia, Director, Ethics and Compliance

- Certified Internal Auditor (CIA)
- Certified Compliance & Ethics Professional (CCEP)
- 20 years' experience in audit, financial and professional services, cybersecurity, process development, compliance and ethics

## ABOUT UNICOM Government:

- UNICOM Government is wholly owned subsidiary of UNICOM Global, specializing in providing technology solutions and services to public sector customers in the US Federal, state and local markets

# Compliance Monitors 101

## How did we get here:

- In 2010 the Small Business Administration suspended GTSI based on allegations of misconduct related to small business regulations. The SBA alleged that GTSI's performance as a subcontractor on the DHS FirstSource contract would have made the prime contractor ineligible for the award, claiming the prime contractor had little to no involvement in the performance of the contracts.
- To resolve the suspension GTSI and the Small Business Administration entered into an Administrative Agreement. The terms of the agreement required that GTSI agree to "retain an independent Monitor that shall monitor the compliance of GTSI with this Agreement throughout the term hereof".
- The Administrative Agreement is scheduled to terminate on or about Oct. 19, 2013.

# Compliance Monitors 101

## ABOUT ME:

Paige Shannon, Federal Services Counsel; Compliance Officer

- MBA, George Mason University
- JD, The Catholic University of America, Columbus School of Law
- BA, The Catholic University of America
- CCEP
- 25 years' experience in litigation, corporate, federal and commercial contracts, compliance and ethics

## ABOUT KGS:

- KGS is an innovative technology and professional services provider specializing in information technology solutions and comprehensive mission and business support services
- Wholly owned subsidiary of Kforce Inc. (NASDAQ: KFRC)

# Compliance Monitors 101

## How did we get here:

- In 2009 the Department of Interior suspended and proposed debarment of KGS based on the actions of a Sr. V.P. who prepared a statement of work which became the basis for a competitively sourced task order. The total value of the task order was \$78,892.32
- The suspension was predicated upon KGS performing work which was not within the scope of their contract and violation of 48 C.F.R. 9.505-2(a)(1) (FAR 9.505-2(b)(1) )- Preparing Specifications or Work Statements.
- To resolve the suspension KGS and the Department of Interior entered into an Administrative Agreement. The terms of the settlement/resolution required that KGS “hire an independent third party monitor agreed upon by KGS and the DOI”.
- The Administrative Agreement is scheduled to terminate on or about September 30, 2013.

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## Resolving Suspension with an Agreement:

- The agreement may be called several different things-Administrative Agreement, Non-Prosecution Agreement, Deferred Prosecution Agreement, Settlement Agreement
- Retain counsel with experience not only with the type of proceeding the company is facing but also with agency-specific experience.
- Capture the expectations of both the company and the agency in the agreement
- Speak to peers and other organizations who have executed similar agreements with the agency.
- Ideally the agreement is very detailed specifically with regard to the monitor's role and duties, including who the monitor will report to and whether or not the company will be permitted to review the monitor's reports to the agency, dispute resolution, and compliance and ethics program requirements.

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## Monitor's Agreement:

- Agreement should not only incorporate the relevant Administrative Agreement terms but also:
  - Dispute Resolution (so important it bears repeating)
  - Monitor's role and detailed scope of duties
  - Agreed upon work plan
  - Fee schedule which includes fees for different levels of resources to be employed during the agreement
  - Company point of contact for monitor

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## Selecting the Monitor:

- Speak to your peers and industry experts
- Speak to others who have worked with Monitors (and those who have worked with the Monitors you are considering)
- **Do your due diligence**; treat the selection of the Monitor as though you are hiring a senior level executive
- Solicit multiple proposals
- Consider the Monitor's experience in the specific areas in which the alleged misconduct occurred e.g. False Claims, Conflict of Interest, Accounting, small business rules
- Consider Monitor's experience with compliance and ethics programs-does the monitor understand the characteristics of an effective compliance and ethics program



# Compliance Monitors 101

## Selecting the Monitor:

- Consider the Monitor's experience in the specific areas in which the alleged misconduct occurred e.g. False Claims, Conflict of Interest, Accounting, small business rules
- Consider monitor's experience with compliance and ethics programs. Does the monitor understand the characteristics of an effective compliance and ethics program; does he or she have certifications in compliance and ethics related areas; is he or she familiar with the requirements of Section 8B2.1 of the USSG?
- Has the monitor previously served as a monitor?
- Assess the monitor's planned approach to his role. Approach should be evident in the proposed work plan
- Understand the monitor's background-audit or investigative or consulting or government

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## Monitor's Work Plan:

The monitor's proposed work plan may demonstrate:

- How deeply does the monitor intend to get involved in Company operations?
- Orientation/Mindset of the Monitor-Does the monitor see him/herself as an investigator/auditor looking to find issues with the Company's compliance with the terms of the Administrative Agreement? Or does the monitor see his/her role as helping the company to fix problems and help the company to comply with the agreement?
- Monitor's plan for managing phases of the engagement.

Phase 1- the Company should expect a period of high intensity effort by the Monitor to establish themselves and learn about the company.

Phase 2- Period of ad hoc and changing requirements based upon what the Monitor has learned about the company, the agency's feedback, and company's progress

Phase 3 –Maintenance period (usually begins at about 12-18 months into the term of the agreement)