

Transcription

Announcer:

The "Behind the Buy" podcast features audio stories told by members of the Federal acquisition workforce who have successfully executed best practice IT contracting strategies from the TechFAR and Digital Services Playbook to help their agency meet its mission.

Anne:

Hello, I'm Anne Rung- Administrator of the Office of Federal Procurement Policy. Today on the Administration's Behind the Buy audio series, we'll hear from we'll hear from Beth Hochberg. Beth is currently an Assistant General Counsel at the General Services Administration. Her government career includes time at the Smithsonian Institution and the International Trade Commission. She has experience in contracting, tech transfer, and intellectual property. At GSA she serves as their chief intellectual property lawyer and focuses on all things IP, as well as social media, end-user license agreements, federal technology transfer, and mobile device applications. Today, Beth is going to share with us her thoughts on Welcome to Behind the Buy, Beth.

Anne (Warm-Up Questions):

What brought you to GSA? First, allow me to thank you for the kind introduction, Anne. I'm a career civil servant, and when the opportunity arose to move over to GSA and broaden my general law skills, I thought "what better place to go?" Little did I know just how broad GSA's mission was, and how many parts of government the agency touched.

In your role at GSA you touch on many areas other than procurement and technology, but tell me how you came to be interested in the cross-section between these topics. I was what you might call a professional student until I went to law school. My undergraduate degree is in chemistry, and so I trained initially to be a patent lawyer. And so the interest in technology was inherent from the beginning. At the Smithsonian, I began my procurement training. At the same time, my bosses recognized that I was an early-adopter of technology and as a scientist myself, I could actually understand what the Institution's scientists were talking about and what they needed. And so I started handling most of the technology contracts, procuring devices, materials, and related technology to help Smithsonian scientists do their work. The Smithsonian had some unique software needs, so I started reviewing, line by line, 100+ page end user license agreements (EULAs) to sanitize out the provisions that weren't federally compliant. Little did I know at the time that my future GSA legal colleagues were doing the same thing for IT EULAs, just on a much larger scale.

How did your time as a contracting officer at the Smithsonian Institution inform what you do now? I received top-notch contracting training and cannot thank the leadership at the Smithsonian's Office of Contracting enough for providing me with a solid contracting base, and for exemplifying the best in contracting ethics and procedures on a daily basis. I was lucky to work on some really great contracts – I was responsible for purchasing the T.Rex skeleton at the National Museum of Natural History, for example – and for those unique experiences I will always be grateful. The contracting training and experiences I acquired at the Smithsonian continue to inform my approach to contracts and EULAs every day. The impact here at GSA is simply incredibly magnified, as the dollar amounts are exponentially larger, as well as the audience that GSA's contracts reach.

Anne:

Play #7 of the digital services playbook recommends having a well-rounded, experienced team that can effectively deliver digital services. What this entails can vary from project to project. In your experience, what expertise are needed to create and deliver digital services to federal agencies?

Beth:

(perhaps touch on specific procurement initiatives you've advised on, or other relevant examples): GSA has been at the forefront in delivering digital services to federal agencies and the public. From the minute I became assigned counsel to the Office of Citizen Services and Innovative Technologies, that office's leadership brought me in early and often every time they had a new mandate to fulfill. In the early days of this administration, mandates were flying fast and furious – and luckily GSA had the program staff and legal staff who could work through truly novel issues and very often came up with a legal path forward. In the early days I was sitting in client meetings immediately Googling phrases and terminology with which I was unfamiliar, then going back to my desk and researching so that I could get myself up to speed with the jargon and the community of practice. For example, I stopped saying “website” and started saying “platform”. I stopped calling my mobile phone a “phone” and instead started referring to it as a “device” – the way a tech and digital person would.

Once we in OGC got up to speed on this new world of digital services and digital strategy, then we were able to work closely with our clients and find workable solutions. A good example would be setting up the Challenge.gov platform. When the America COMPETES Act came out, GSA was given 6 months to stand up the platform from scratch. This included defining the needs, finding a designer, finding a host, and building it. Even today I still marvel at how OCSIT, OGC, and the procurement team came together so efficiently to get the platform up and running within the statutory timeframe. And it's become an incredibly useful portal for all federal agencies running prize competitions.

Anne:

How have you found legal expertise helpful in executing IT contracts and building various digital services at GSA? For example, how important is it to have team members who understand legal issues in privacy or contracting?

Beth: Luckily, GSA has a strong team of procurement attorneys with a long history of excellence in EULAs and data rights provisions, so it was incredibly helpful to have colleagues who could help work through the novel digital services issues. We also have attorneys specializing in privacy – as well as GSA's privacy officer – and so I would loop them in early and often. Perhaps most useful of all were the contract litigators, however. We have some seasoned contract litigators with decades of experience before the Board of Contract Appeals, GAO, etc. These colleagues – in particular, John Cornell and Mike Ettner - were able to look at iffy contract provisions and make a truly informed guestimate of just how risky the provision was, and how it might be viewed in adjudication. In other words, they had the legal knowledge to predict an informed potential final outcome and then work backwards from there. This is perhaps the greatest gift I've received during my time at GSA – the ability to think logically to a final outcome, make a risk assessment, and then work backward and find a practical solution for the client office. There is true operational excellence here in OGC.

Anne:

Given the amount of end-user data that is often entered into a system, how do you ensure user privacy, from both a legal and a technical point of view? How important is the structure and experience of your team in protecting this information and keeping sensitive IT products and systems secure?

Beth: Protecting privacy, ensuring network integrity – these are of course of paramount importance. As is preserving the necessary records associated with that data. It's an ever-evolving area of concern because the technologies at play are themselves ever-evolving. Think about it: new product versions, or updates, sometimes come out every month. An agency's data privacy plan can become outdated the minute it's signed. And when aggregating data from multiple sources – as the Common Acquisition Platform is doing – can be incredibly difficult because we have to ensure that we have the right permissions to use existing data in this new and/or additional way. I don't think there will ever be a one-size-fits-all solution, as every new platform or use will have its own nuances, and as every agency has their own authorities, and also because who knows what contract terms a contracting Officer used to obtain the particular data that is being aggregated. So many moving parts, so many potential outcomes.

Anne:

Could you tell us a little about your experience and the lessons learned from working on the Common Acquisition Platform and HCaTs?

Beth: Both of those platforms have their own assigned counsel, so I'm brought in just to look at the intellectual property or digital pieces. So right off the bat there are multiple lawyers involved. I mentioned CAP earlier – one of the biggest challenges from my perspective is finding a way to get different data sets in uniformity, and then find a way to present them in a way that's useful to an end-user. With HCaTs, my portion has been simply to advise from a branding standpoint. Getting various program offices at two different agencies (GSA and OPM) to be available to talk at the same time, and then come to an agreement, has been like herding cats (no pun intended).

Anne:

You've worked on mobile device application projects. What's the future of this particular type of digital service in the federal government? What opportunities for innovation does it open up for the government? What are the procurement and acquisition challenges associated with mobile device applications?

Beth: It is incredible the ways in which federal agencies can deliver services to the public via mobile apps. Frankly, I only see expansion in this area. GSA's MobileGov team stepped up early on, truly being a proactive federal partner, and started aggregating and verifying federal mobile apps from the very beginning. We in OGC spent years negotiating the Terms of Service and App Developer agreements with the major cell phone providers so that agencies would be able to upload mobile phone apps for free and then also make them freely available for download. My intellectual property background came into play when I noticed fake apps masquerading as legitimate federal apps, even using agency seals and trademarks. To this day I still spot fake ones, and notify agency counsel, then work with the mobile provider to get the infringing apps removed.

Mobile apps were rather pricey in the beginning – agencies were usually paying at least \$50,000 for them. Now, most of the time they're closer to just \$5,000 or less, with agencies perhaps

running prize competitions for them, or even developing them in-house. So that's the biggest change I've seen.

Responsive design is usually at the forefront of any mobile app acquisition, as well as keeping the design easy to load, and also 508 compliant. There are populations for whom a mobile phone is their first or only internet entry point and thus who may only have access to federal websites via their phones. Federal apps need to be responsive, download easily, and provide information in plain language via an intuitive design. Many apps are now also bilingual, to further disseminate valuable agency information.

Anne:

Thank you Beth for sharing your insights. Behind the Buy welcomes innovation and collaboration from both Industry and Government to highlight best practices in Federal IT procurement. We want to hear about your experience to increase the awareness and adoption of proven techniques. Share your experiences and learn from your peers by visiting [buyers club dot idea scale dot com](http://buyersclub.com) and clicking "TechFAR Hub Use Cases." Access curated expertise, prices paid data, and contract vehicles for categorized goods and services by visiting the Acquisition Gateway at [hallways dot cap dot gsa dot gov](http://hallways.gsa.gov).

As always, thanks for tuning in.

Listen for us next time, where we'll continue to take you Behind the Buy.