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THE UNITED STATES ATTORNEY'S OFFICE  
DISTRICT *of* MARYLAND

**Axway, Inc. Agrees To Pay \$6.2 Million To Resolve False Claims Act Allegations Related To GSA Multiple Awards Contract**

**FOR IMMEDIATE RELEASE**

**October 28 , 2013**

Baltimore, Maryland – Axway, Inc. has agreed to pay the United States \$6.2 million to settle allegations under the False Claims Act that it and its predecessors provided the General Services Administration (GSA) with defective pricing information in order to obtain and maintain a GSA Multiple Award Schedule (MAS) contract that permitted them to sell software licenses and related services to federal agencies at inflated prices.

The settlement was announced by United States Attorney for the District of Maryland Rod J. Rosenstein and Inspector General Brian D. Miller of the GSA Office of the Inspector General.

"This agreement demonstrates the Department of Justice's commitment to rooting out fraud in government procurements and protecting taxpayer dollars," said U.S. Attorney Rod J. Rosenstein. "Companies that attempt to skirt the rules for securing government business should be on notice that they will be held accountable and will not be permitted to undermine the integrity of the procurement process."

"Companies must provide complete and accurate pricing information during the GSA contracting process," said GSA Inspector General Brian D. Miller. "Failure to do so is cheating the government and ultimately the American taxpayers, and taxpayers deserve a better deal."

Under the MAS Program, prospective vendors agree to disclose their commercial pricing policies and practices to GSA in exchange for the opportunity to gain access to the broad federal marketplace and the ease of administration that comes from selling to hundreds of government purchasers under one central MAS contract. GSA regulations require that, during the initial contract negotiations with GSA, prospective vendors seeking a MAS contract make "current, accurate and complete" disclosures of the standard and non-standard discounts they offer to commercial customers. GSA relies on the accuracy of these disclosures in order to negotiate fair pricing for government purchasers. Additionally, after the MAS contract is awarded, regulations require that MAS Program vendors disclose to GSA any changes in their commercial pricing practices, including new discounts that are offered to commercial customers after the MAS contract is in place.

According to the Settlement Agreement, on October 3, 2001, GSA awarded an MAS contract to Valicert, Inc. for the sale of software licenses and related services. Valicert subsequently merged in 2003 with Tumbleweed Communications Corporation, which in turn merged with Axway in 2009. GSA approved the novation of the MAS contract to these successors. From 2001 to December 31, 2011, numerous federal agencies purchased products and services from Valicert, Tumbleweed and Axway based on the MAS contract pricing.

This settlement resolves allegations that during the initial negotiation of the contract, Valicert knowingly provided GSA with commercial pricing information that was not current, accurate and complete. As a result, the United States alleges that the MAS contract that was awarded to Valicert contained pricing that was less advantageous to the government than would have been negotiated had accurate and complete disclosures been made. In addition, the United States alleges that in 2007, when the MAS contract was renewed, Tumbleweed also failed to provide GSA with accurate and complete commercial pricing disclosures. Finally, the United States contends that after being novated onto the MAS contract,

Tumbleweed and Axway failed to comply with the price reduction clause of the contract. As a result, the United States alleges that the MAS contract contained inflated prices, and that numerous government agencies relied on these inflated prices and overpaid for their purchases of software and related services.

The civil settlement resolves a lawsuit filed under the whistleblower provision of the False Claims Act, which permits private parties to file suit on behalf of the United States for false claims and obtain for themselves a portion of the government's recovery. The civil lawsuit was filed in the District of Maryland by Kenneth Marcus, who is a former employee of Tumbleweed. The case is captioned United States ex rel. Kenneth Marcus v. Tumbleweed Communications Corp., DKC-08-1006. As part of today's resolution, Mr. Marcus will receive \$1,178,000 from the settlement.

The settlement was the result of an investigation by the U.S. Attorney's Office for the District of Maryland and GSA Office of Inspector General, with assistance from the Defense Criminal Investigative Service and the Naval Criminal Investigative Service. The case was handled by Assistant U.S. Attorneys Michael A. DiPietro and Jason D. Medinger.