

THE NEWSLETTER FROM THE BDO GOVERNMENT CONTRACTING PRACTICE

BDO KNOWS: GOVERNMENT CONTRACTING



THE TOP 10 THINGS GOVERNMENT CONTRACTORS NEED TO KNOW ABOUT TAX REFORM

The \$1.5 trillion new tax law represents the most sweeping change to tax code in a generation. Tax reform of this magnitude will have broad implications for government contractors.

While accountants and tax departments waded through the 185-page legislation, here are the top 10 things government contractors need to know:



1. The corporate tax rate was permanently reduced from 35 percent to 21 percent.

The top corporate tax rate has been permanently reduced from 35 percent to a flat rate of 21 percent, beginning in 2018. Unlike all other provisions in the new law, including tax breaks for individuals, the new corporate tax rate provision does not expire.



2. There's a tax break for owners of pass-through entities.

The new law provides owners of pass-through businesses—which include individuals, estates, and trusts—with a deduction of up to 20 percent of their domestic qualified business income, whether it is attributable to income earned through an S corporation, partnership, sole proprietorship, or disregarded entity. Without the new deduction, taxpayers would pay 2018 taxes on their

Ask the Pros



If you have a question—large or small—or are searching for a resource, you can count on our team to help you get on the right track with timely knowledge and thorough insights. Our practice combines extensive experience in government contracting work with deep understanding of the latest technical, compliance, accounting, regulatory and business matters important to contractors.

Go ahead, ask one of our pros.

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TAX REFORM

share of qualified earnings at rates up to 37 percent. With the new 20 percent deduction, the tax rate on such income could be as low as 29.6 percent. It should again be noted that certain service industries are excluded from the preferential rate, unless taxable income is below \$207,500 (for single filers) and \$415,000 (for joint filers), under which the benefit of the deduction is phased out.



3. There might be huge tax benefits to changing your company's current choice of entity.

Taxpayers should consider evaluating the choice of entity used to operate their businesses. The 21 percent reduced corporate tax rate may increase the popularity of corporations. However, factors such as the new 20 percent deduction for pass-through income, expected use of after-tax cash earnings, and potential exit values will significantly complicate these analyses. The potential after-tax cash benefits ultimately realized by owners could make choice-of-entity determinations one of the most important decisions taxpayers will now make.



4. There have been significant changes to the international tax system.

In connection with these changes, certain U.S. shareholders who own stock in certain foreign corporations will have to pay a one-time "transition tax" on their share of accumulated overseas earnings. Other changes include a "participation exemption," which is a 100 percent dividend-received deduction that permits certain domestic C corporations to receive dividends from their foreign subsidiaries without being taxed on such dividends when certain conditions are satisfied. There is also a new requirement that certain U.S. shareholders of controlled foreign corporations (CFCs) include in income their share of the "global intangible low-taxed income" of such CFCs. Finally, there are new measures to deter base erosion and promote U.S. production.



5. The corporate AMT and DPAD are dead, but Research Tax Credits live on.

The law repeals the Section 199 Domestic Production Activities Deduction (DPAD) and the corporate Alternative Minimum Tax (AMT) for tax years beginning after 2017. The Research Tax Credit was retained and is now more valuable given the reduction of the corporate tax rate from 35 percent to 21 percent.



6. They've scrapped NOL carrybacks and limited the use of carryforwards.

Previously, businesses were able to offset current taxable income by claiming net operating losses (NOLs), generally eligible for a two-year carryback and 20-year carryforward. Now NOLs for tax years ending after 2017 cannot be carried back, but can be indefinitely carried forward. In addition, NOLs for tax years beginning in 2018 will be subject to an 80 percent limitation. Companies will have to track their NOLs in different buckets and consider cost-recovery strategy on depreciable assets in applying the 80 percent limitation.



7. Tax reform's impact on accounting methods may change when revenue is recognized, but new provisions could also lead to temporary and permanent tax benefits.

Under the new law, accrual basis taxpayers must now recognize income no later than the taxable year in which such income is taken into account as revenue in an applicable financial statement.

However, new provisions also provide favorable methods of accounting that were not previously available. That, coupled with the reduction in tax rates, creates a favorable and unique environment for filing accounting method changes.

There are many method changes still available for the 2017 tax year. Taxpayers should evaluate current accounting methods to identify any actionable opportunities to accelerate deductions and defer income for the 2017 tax year, which could result in significant tax savings.



8. There are new rules for bonus depreciation and full expensing on new and used property.

The new tax law allows a 100 percent first-year deduction—up from 50 percent—for the adjusted basis of qualifying assets placed in service after Sept. 27, 2017, and before Jan. 1, 2023, with a gradual phase down in subsequent years before sunseting after 2026. The definition of qualifying property was also expanded to include used property purchased in an arm's-length transaction. Businesses should pay close attention to any qualifying asset acquisitions made during the fourth quarter of 2017, as the full expensing can be taken on the 2017 return if the property was acquired and placed in service after Sept. 27, 2017.

CONTINUED FROM PAGE 2

TAX REFORM

Additionally, under new tax law, taxpayers may now deduct up to \$1 million under Section 179 for properties placed in service beginning in 2018 — double the previous allowable amount. The phase-out threshold is increased to \$2.5 million and will be indexed for inflation in future years and the types of qualifying property has been expanded.



9. The availability of the cash method of accounting expanded for small businesses.

Beginning in 2018, the average annual gross receipts threshold for businesses to use the cash method increases from \$5 million to \$25 million. Additionally, small businesses who meet the \$25 million gross receipts threshold are not required to account for inventories and are exempt from the uniform capitalization rules. The \$25 million is indexed for inflation for tax years beginning after 2018.



10. Now is the time to assess total rewards strategies.

Tax reform significantly impacts various components of an employer's total compensation program—namely the expansion of the \$1 million deduction cap on pay to covered employees; disallowed deductions for transportation fringe benefits provided to employees; income inclusion for employer-paid moving expenses; further deduction limitations on certain meal and entertainment expenses; and a two-year tax credit for employer-paid family and medical leave programs. As the IRS releases guidance, employers must immediately modify their payroll systems to reflect tax reform changes impacting individual taxpayers.

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CYBERSECURITY FOR GOVERNMENT CONTRACTORS: NEXT STEPS

By Gregory Garrett

The U.S Department of Defense (DoD) has implemented new cybersecurity requirements for defense contractors via the DD Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.204-7012, which became effective Dec. 31, 2017.

This DFARS clause requires all defense contractors to implement information security programs to protect their Controlled Unclassified Information (CUI) in Non-Federal Systems and organizations in accordance with the National Institute of Standards & Technology (NIST) Special Procedure (SP) 800-171.

NIST SP 800-171 provides 109 individual security controls, which are categorized under 14 families of information security requirements. It is widely expected that this set of cybersecurity requirements will be extended beyond defense contractors to all government contractors via a new final rule to the Federal Acquisition Regulation (FAR) during 2018.

It is not surprising that many government contractors, especially defense contractors, feel overwhelmed, as they must now comply with several new requirements on top of the numerous industry-specific and international cybersecurity standards, such as ISO

27001. So, now that defense contractors' information security systems must be compliant with NIST SP 800-171, government contractors are asking "What is Next..."

1 Expect the Defense Contract Management Agency (DCMA) to begin conducting information security reviews/assessments of major defense contractors and selected mid-sized defense contractors in early 2018.

It is expected that DCMA may request a copy of the contractor's System Security Plan (SSP), Incident Response (IR) plan, and a copy of its information security policies and procedures for each of the 14 information security categories contained within NIST SP 800-171.

2 Anticipate the Defense Contract Audit Agency (DCAA) to develop audit guidelines related to information security management systems' cost accounting and begin conducting audits for cost allowability and reasonableness by mid-2018.

It is expected that the New DFARS 252.204-7012 cybersecurity and information security management system will be

CONTINUED FROM PAGE 4

CYBERSECURITY

treated in the same manner as the current six major DFARS contractor business systems: accounting, cost estimating, Material Management and Accounting System (MMAS), government property management and Earned Value Management System (EVMS).

3 Expect a few large and mid-sized defense contractors to be determined to be non-compliant with all or part of the DFARS 252.204-7012 and NIST SP 800-171 requirements by mid- to late 2018.

It is expected that some contractors will be given a variety of remediation actions and/or penalties as deemed appropriate by the respective Government Contracting Officer, which may include:

- ▶ Withhold contractor payments.
- ▶ Issue a Stop Work Order.
- ▶ Issue a Suspension of Work.
- ▶ Terminate the contract for default.
- ▶ Place the contractor on the government ineligible contractor list.

4 Anticipate the issuance of a new FAR Final Rule Creating Cybersecurity requirements for all U.S. government contractors by late 2018.

It is expected that the Federal Acquisition Regulatory (FAR) Council will enact a new FAR Cybersecurity Final Rule for all government contractors, which will be quite similar in nature and content as the current DFARS clause.

5 Expect a new wave of government contractors conducting internal cyber risk assessments and compliance gap analysis per NIST 800-171 information security requirements by late 2018 and early 2019.

It is expected that a new wave of government contractors will conduct internal risk assessments, after the DCMA information security system reviews and DCAA audits on defense contractors are conducted containing numerous negative audit findings. Plus, the issuance of a new FAR Final Rule for cybersecurity requirements for all government contractors will further increase the demand for independent cybersecurity risk assessments and compliance gap analysis. Many government contractors will become highly focused on improving their respective information security policies, processes and procedures, with increased focus on monitoring, detection, incident response, business continuity planning, disaster recovery and third-party information security management.

6 Anticipate a New Public Law (PL) for cybersecurity to be established for consistency in Cyber Incident Response Reporting and Timely Remediation Actions for Cyber Breaches for all Publicly Traded Companies in 2019.

Based upon the increasing number of cyber-attacks and the growing financial impact of recent cyber breaches, especially upon large publicly traded companies, it is widely expected that the U.S. Congress will enact a New Public Law to establish some consistency in cyber incident reporting with specific requirements for timely remediation actions post-breach with appropriate penalties for non-compliance.

7 Expect the global shortage of experienced cybersecurity professionals to increase over the next three to five years.

Thus, the need to create the right balance of cybersecurity employees, automated tools and outsourced or managed security services will become vital to all public and private organizations, especially for small to mid-sized companies.

SUMMARY

As government contractors are required to comply with new U.S. regulatory requirements, they are experiencing a rise in compliance-related costs. It is well known that many government contractors will sometimes decide to defer these additional compliance-related costs to see if the government will enforce the new information security requirements. If the cybersecurity requirements are enforced by the government, as we expect they will be, the government contractors will often wait to see how much the penalties are and if the cost of the penalties is greater than the cost of compliance to decide whether they should bear the additional expenses.

Government contractors now find themselves facing a growing business dilemma: They must figure out the best way they can properly safeguard their CUI, ensure regulatory compliance while continuing to remain competitive in the federal marketplace, and achieve a fair and reasonable return on investment. Meanwhile, we fully expect the U.S. federal government to continually evolve and expand its cybersecurity regulatory requirements.



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THE 5 PILLARS OF AN EFFECTIVE PROJECT CONTROLS SYSTEM

By Jessica Coral

An effective project controls system does more than inform project stakeholders of delays, cost overruns, risks or technical issues. Beyond these functions, a successful project controls system enables trending analysis and forecasting to predict issues while there is still time to fix them.

What is a project controls system? A cost and schedule-based approach consisting of the people, processes and tools that helps identify and communicate the metrics of project performance. While project management systems may include cost, schedule, risk, resource, quality or scope management, a project controls system focuses on cost and schedule performance. The project controls system should provide cost and schedule information that informs project management, who can then make decisions regarding the project's direction.

Implementing an entire project controls system at once is a daunting task. If an organization can first establish the five pillars of a project controls system, it will lay the groundwork for a reliable system that can be expanded as project maturity grows. The five pillars are as follows:

- 1. Work Breakdown Structure (WBS)** – A well-developed WBS should include all work scope. If used as a guide for developing the integrated master schedule (IMS), the project team ensures all scope is captured in the schedule.
- 2. Accurate Time-Phased Budget Aligned to the Integrated Master Schedule (IMS)** – A resource-loaded schedule is the best way to align project budget to the time phasing of activities. If this is not possible, cost and schedule planners should work closely to align the budget. Doing so improves the ability to measure performance during the execution of the project.
- 3. Project Accounting and Accruals Aligned with Project Performance** – The system must support the capture of direct and indirect costs at a level of the WBS appropriate for

the work. Additionally, cost should align with the capture of performance. If invoices from subcontractors or suppliers are delayed, accruals or estimated actuals should be used to align with performance.

- 4. Accurate & Objective Monthly Status** – Progress completing project tasks must be tracked in an objective manner at a level of detail that is meaningful to the project.
- 5. Change Control** – The system must track changes to the original plan, including changes to the cost, schedule and technical deliverables.

If these pillars are implemented, the project controls system will address the common pitfalls of project management, such as misalignment of cost and schedule, insufficient or inaccurate cost and performance data, and technical scope creep. The system will:

- ▶ **Ensure Proper Execution:** Provide integrated management of program planning and execution. This will allow the program to accomplish its technical objectives within its cost and schedule parameters, while reducing or eliminating cost overruns.
- ▶ **Encourage Proactivity:** Enable the project management team to make proactive operational and administrative decisions based on forward-looking reporting rather than making reactive decisions after an issue has occurred.
- ▶ **Reduce Risk:** Significantly reduce the risks of technical performance deficiencies and cost and schedule variances by avoiding issues with cash flow, customer satisfaction ratings and project margins.

Tackling these common pitfalls ensures that the system provides actionable, reliable trending and forecast data that the project team can use to finish projects on time and within budget.

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HOW TO IMPLEMENT THE NEW REVENUE RECOGNITION STANDARD

By Amy Thorn & Chris Carson

The deadline for implementation of ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606) has passed for public companies. Is your company, whether public or private, compliant with this new standard?

In our [Spring 2017 Newsletter](#), we provided a refresher on the standard's main provisions, and reviewed key implementation methods and issues that may arise for government contractors during implementation, including those addressed by AICPA's Industry Revenue Recognition Task Force for Aerospace & Defense.

In the fall of 2017, we met with many of our clients and colleagues here in our Washington, D.C. office to deliver a live seminar, providing a complete overview of the principle-based, five-step model and a deeper dive into the anticipated accounting implementation issues specific to government contractors. If you were able to join us, we hope you found the session helpful. If you were not able to join us, please contact us. We would be happy to share a copy of the presentation with you.

The effective date of the new standard was Jan. 1, 2018, for calendar year publicly held companies and is **Jan. 1, 2019**, for calendar year privately held companies.

IMPLEMENTATION METHODS

The new standard provides for two implementation methods:

1. Full retrospective application:

Recast of prior period financial statements (with an adjustment to opening retained earnings for the first year presented).

For example, for a private company, 2018 would be recast to reflect the adoption of the new standard presented in the 2019 financial statements. The cumulative adjustment would be reflected as of Jan. 1, 2018.

2. Modified retrospective application:

Cumulative effect of initially applying the standard is recorded as an adjustment to opening retained earnings of the period of initial application. Under the same example, 2018 would not be recast in the 2019 financial statements. The cumulative adjustment would be reflected as of Jan. 1, 2019.

STEPS FOR IMPLEMENTATION

Implementation of the new standard will require planning and collaboration, particularly among Accounting and Contracts personnel. Follow these steps to get started:

1. Designate the individual(s) responsible for overseeing implementation:

Do this soon! The individual responsible for implementation of the new standard should have a clear understanding of its main provisions, as well as a familiarity with key issues to look out for with respect to government contracts. If you still need training, be sure to consult with an outside professional to ensure you get up to speed on the provisions of the new standard and application of the five-step model to government contracts.

2. Educate your executive management, audit committee, board of directors, investors, etc. on the new standards:

You should consider presenting a high-level overview of your implementation plan to executive management and others, including the expected timing of when you will be prepared to brief them on the impact to your company's accounts.

3. Evaluate how changes will impact how your company accounts for different types of revenue streams and contracts:

In working closely with publicly held companies, we have seen great success in using a phased approach to analyze contracts, accumulate revenue streams and, ultimately, to calculate the impact to the company's accounts. A phased approach such as the following should be considered:

► Phase I (Scoping and Assessment):

Document revenue streams and accounting policies followed by your company under the existing accounting guidance, if these are not already documented. Review contracts as needed to identify and understand variations in contracts and to identify common contract attributes within each revenue stream. For example, you may identify revenue streams such as i) T&M contracts, ii) fixed-price contracts and iii) cost-plus contracts. Within cost-plus contracts, you may have cost-plus, fixed-fee or cost-plus, award-fee and will segregate the analysis of those contracts based on those attributes. Within fixed price contracts, you may have "straight-line" services-based contracts and/or "percentage-of-completion" type development/production contracts.



CONTINUED FROM PAGE 7

REVENUE RECOGNITION STANDARD

► Phase II (Technical Analysis):

Complete individual contract review and analysis under the five-step model and evaluate recognition under the new standard. This must be done for each contract, within each revenue stream. Proper attention to scoping in Phase I should facilitate a more efficient implementation by documenting and analyzing similar contracts at one time.

► Phase III (Business Systems Impact):

Evaluate current controls, policies and procedures, and document any changes required to facilitate revenue recognition under the new standard. Additionally, evaluate whether any accounting system change requirements will be necessary.

► Phase IV (Financial Reporting):

Using the analysis from Phase II, prepare a summary of the impact to accounts for 2018 and 2019, to facilitate recording adjustments and/or disclosure requirements.

4. Determine implementation method:

Those responsible for implementation of the new standard should discuss the overall impact to accounts for 2018 (for comparative purposes) and to 2019 (year of implementation) with all major stakeholders (executive management, audit committee, board of directors, investors, etc.). Based on the materiality of the impact, and the qualitative feedback from stakeholders, you should select a method that is determined to be most efficient and transparent in your financial statements. Our expectation is that to the extent the adoption of the new standard does not have a material impact on the financial statements, some entities may wish to use the modified retrospective application. On the flip side, even when not material, some companies may elect to do a full retrospective application to avoid additional disclosures that are required

when using the modified retrospective approach (i.e., disclosing impact to all prior periods at a disaggregated level).

We expect that in instances where there is a material impact to the financial statements as a result of implementation, most companies will elect to use full retrospective application in order to present useful and transparent comparative information in the financial statements.

CONSULT YOUR AUDITOR

Whether we are already your auditor, or you simply need a sounding board that can provide hands-on comprehensive assistance with your implementation, BDO is ready and able to help. Consult with us early on as you work through your implementation plan. We will be working alongside you to provide continuing updates and reminders to make sure you are on track and to share best practices along the way. Enough talk, let's get to work.

ADDITIONAL RESOURCES:

Visit the A&D Task force website [here](#).

Visit the FASB Transition Resource Group [here](#), and read ASU 2014-09 [here](#).



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QUARTERLY REGULATORY UPDATE

SPRING 2018

QUARTERLY REGULATORY UPDATE

FINAL DECISIONS

[UNAUTHORIZED RELEASE OF INCUMBENT'S PROPOSALS FOR CURRENT REQUIREMENT GIVES RISE TO OCIS, PROCUREMENT INTEGRITY ACT VIOLATION; GAO B-414461, DELL SERVICES FEDERAL GOVERNMENT INC.](#)

KEY DETAILS: Protest alleging the agency failed to reasonably investigate a possible Procurement Integrity Act violation is sustained, where the agency concluded that the release of the incumbent contractor's proposals for the current requirement would have no effect on the follow-on competition, but did not consider whether a competitor's access to the incumbent's proposed pricing, labor rates, and staffing strategies would provide a competitive advantage; and protest arguing the prospective offeror has organizational conflicts of interest arising from its receipt of the protester's proposals is sustained, where the agency failed to consider that the firm had access to nonpublic, competitively useful information, or that the individual supplying that information may have participated in developing the agency's requirements for the current acquisition.

EFFECTIVE: 7/20/2017

[GOVERNMENT IMPROPERLY DISALLOWED COSTS THAT WERE NEVER ACCRUED OR CHARGED; ASBCA NO. 60190, APPEAL OF NORTHROP GRUMMAN CORPORATION](#)

KEY DETAILS: Appeal of the government's final decision disallowing costs related to the contractor's post-retirement benefits plan is sustained, where the contractor used a methodology that was not compliant with the FAR, but did not accrue, incur, or charge the government for these costs, and therefore the contractor will never claim and the government will never pay the disallowed costs. In an earlier decision, the Armed Services Board of Contract Appeals denied Northrop Grumman Corporation's appeal of the agency's disallowance of \$253,361,512 of post-retirement benefit costs associated with Northrop's transition from its existing accrual methodology to the methodology prescribed in FAR 31.205-6(o). During the entitlement phase, ASBCA determined that, for government contract accounting purposes, Northrop failed to measure, accrue, assign and fund its PRB costs in accordance with FAS 106 and FAR 31.205-6(o) allowability criteria during FYs 1995 to 2006, prior to Northrop's 2006 transition to the FAR-compliant methodology.

EFFECTIVE: 8/7/2017

[UNAVAILABILITY OF KEY PERSONNEL: A GROWING PROTEST RISK](#)

KEY DETAILS: In the decision of YWCA of Greater Los Angeles, the GAO determined that offerers must notify the procuring agency of any changes to proposed Key Personnel, even after a proposal has been submitted. GAO further explained that if the procuring agency receives notice of a Key Person's unavailability, it may reject the proposal. An offeror may have the opportunity to provide a substitute Key Personnel "only if the procuring agency elects to formally engage in discussions with all offerers." Regardless of whether the unavailability of a Key Person is foreseeable or the fault of the offeror, the proposal may be rejected. This has implications on the competitive range of an offeror if the proposal is deemed technically unacceptable due to the sudden unavailability of Key Personnel when an acceptable substitution is readily available.

EFFECTIVE: 10/9/2017

[AGENCY UNREASONABLY ELIMINATED PROPOSAL BASED ON COMPLIANCE WITH PROPOSAL PREPARATION INSTRUCTIONS, INSTEAD OF EVALUATION OF SUBSTANCE; GAO B-414787, MCCANN-ERICKSON USA INC.](#)

KEY DETAILS: McCann-Erickson USA, Inc. (ME) protested the elimination of its proposal from consideration under request for proposals (RFP) No. W9124D-16-R-0046, issued by the Department of the Army for advertising services. ME argued that the agency unreasonably eliminated its proposal without meaningfully evaluating it. The RFP anticipates the award of a hybrid (fixed-price plus cost reimbursable) indefinite-delivery, indefinite-quantity contract to provide the Army with advertising and marketing services for a five-year base period and two successive option periods of three years and two years, respectively. The ceiling value of the acquisition is \$4 billion. Firms were told the agency would make an award on a best-value basis, and considered the following evaluation criteria: technical, cost/price and small business participation. ME received record showing the agency eliminated the proposal based on a compliance review as opposed to the above criteria. In response, the Government Accountability Office (GAO) confirmed the accusations protested and recommends the agency reevaluate the RFP in consistency with the terms of the solicitation.

EFFECTIVE: 10/17/2017

CONTINUED FROM PAGE 10

QUARTERLY REGULATORY UPDATE

[CONTRACTOR AWARD ADDITIONAL COSTS RESULTING FROM GOVERNMENTS NEGLIGENT ESTIMATE; COFC NOS. 13-55C, 13-97C, AGILITY DEFENSE & GOVERNMENT SERVICES INC.](#)

KEY DETAILS: Agility Defense & Government Services Inc. incurred additional costs under a contract with the Defense Reutilization Management Services. Even though a decision had previously been made by the Federal Circuit, "Agility further maintained that the evidence furnished to the court substantiates its claim for an equitable adjustment." The Defense Reutilization and Management services argued that Agility's evidence could not prove it incurred damages because of the government's negligence. The court made its decision and awarded Agility an equitable adjustment for the total amount.

EFFECTIVE: 10/25/2017

[PROTESTER ENTITLED TO PROTEST COSTS WHERE AGENCY TOOK CORRECTIVE ACTION AFTER SUPPLEMENTAL COMMENTS \(GAO B-414573.3\)](#)

KEY DETAILS: Protections Strategies Inc. filed a protest challenging the Securities and Exchange Commission's award of a contract, challenging the agency's tradeoff decision. After the agency filed a supplemental agency report and PSI filed supplemental comments, and after GAO informed the parties of its view of the litigation risks for each side, the agency took corrective action to terminate the award and cancel the solicitation. PSI sought to recover its costs for pursuing the protest, arguing that the agency unduly delayed taking corrective

action in response to PSI's clearly meritorious protest. PSI challenged the agency's best value tradeoff decision, arguing that the record lacked any consideration of the strengths and weaknesses of PSI's proposal, particularly considering that PSI's price was lower than the awardee's. Although the agency argued that the selection official relied on a technical evaluation report to make the award decision, GAO found that the award decision did not include any documentation of a comparative assessment of PSI's proposal. As a result, GAO found PSI's protest on that basis to be clearly meritorious.

EFFECTIVE: 11/28/2017

[GSA LOSES PROTEST FOR BUNDLING REQUIREMENTS UNDER JWOD PROCUREMENT \(GAO B-415137\)](#)

KEY DETAILS: Goodwill Industries of the Valleys and Source America protested a full-service lease awarded by the General Services Administration (GSA) based on a violation of the Javitz-Wagner-O'Day Act, which provides employment and training opportunities for people with disabilities. The GSA claimed it was not subject to the JWOD Act; however, GAO sustained the protest, declaring the GSA bundled services into their lease without procuring the services in accordance with the JWOD Act. GAO rejected the GSA's claim that Goodwill was not an interested party and explained that as Goodwill was the mandatory source for custodial services, GSA was required to procure services from Goodwill.

EFFECTIVE: 12/20/2017

FINAL RULES

[FINAL RULE – REMOVAL OF FAIR PAY AND SAFE WORKPLACES RULE](#)

KEY DETAILS: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a public law that disapproved the final rule, Fair Pay and Safe Workplaces (FAR Case 2014-025), and an Executive Order (E.O.) dated March 27, 2017, that rescinded the prior Executive orders authorizing that rule. The Fair Pay and Safe Workplaces rule seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by ensuring that they understand and comply with labor laws.

EFFECTIVE: 11/6/2017

QUARTERLY REGULATORY UPDATE

PROPOSED RULES

[SBA PROPOSES RULES FOR OHA TO CONSIDER CVE APPEALS AND PROTESTS](#)

KEY DETAILS: SBA proposed an amendment to SBA Office of Hearings and Appeals rules of practice to grant OHA jurisdiction over protests and appeals of VA's determination with respect to the eligibility for registration in the VA Center for Verification and Evaluation database. This amendment is proposed because the FY 2017 NDAA prohibits VA from issuing rules related to the status of SDVOSBs, instead directing the agency to follow SBA regulations.

Under this proposal, procedures for CVE protests will mirror SBA's existing rules for protests of SDVOSB status. Protests of eligibility must be filed within five days of awardee announcement, and appeals must be filed within 10 days. Contracting officers are also given the ability to file a protest challenging the eligibility of an awardee for inclusion in the CVE database.

EFFECTIVE: 11/9/2017

[PENTAGON REVERSES COURSE AND ROLLS BACK ON THE IR&D TECHNICAL INTERCHANGE RULE](#)

KEY DETAILS: On Sept. 14, 2017, the Department of Defense issued a new class deviation that eliminates the requirement on major contractors to engage with the Government in technical interchange meetings prior to the generation of independent research and development (IR&D) costs. This class deviation represents a continuing reversal in position for the Pentagon, which had been moving forward with placing more guiderails for IR&D spending.

EFFECTIVE: 9/27/2017

KEY REPORTS, MEMORANDUMS, GUIDANCE ETC.

[SPECIAL PLAN AND OPERATIONS REPORT: SECTION 1206/2282 FUNDING](#)

KEY DETAILS: The Office of Inspector General (OIG) of the Department of Defense issued a Special Plans and Operations Report, evaluating DoD efforts to build counterterrorism and stability operations capacity of foreign military forces. The objective was to determine whether the DoD Global Train and Equipment Program (2006 NDAA, Section 1206) effectively managed and enhance partner-nation security-force capabilities.

The DoD OIG found that Section 1206 had not been established as a distinct and fully developed program and that project proposal guidance, selection criteria, analysis procedures and metrics for determining results achieved from 1206 implementation were insufficient, under-enforced, misaligned and incomprehensive, respectively.

The evaluation report (click link for details) includes recommendations to designate a lead manager and develop a comprehensive implementation plan resulting in well-crafted proposals, a robust selection process and established performance measures. It also provides Management Comments and the OIG response.

EFFECTIVE: 7/21/2017

[DEPARTMENT OF LABOR INCREASES HEALTH AND WELFARE FRINGE BENEFIT RATES FOR CONTRACTS COVERED BY THE SERVICES CONTRACT ACT](#)

KEY DETAILS: DOL's Wage and Hour Division issued a memorandum increasing the health and welfare fringe benefits rate for contracts covered by the SCA. SCA's requirement for contractors and subcontractors performing work on federally funded prime contracts is to pay service employees wage rates and fringe benefits at least what is required by the locality in which the contract is being performed or the rates and benefits included in a contractor's collective bargaining agreement are adjusted by the DOL each year. This year, the wage determinations adjusted by the DOL included on adjustment for SCA covered contracts and another for contracts covered by SCA and Executive Order 13706, which established paid sick leave for federal contractors. For those contracts covered by Executive Order 13706, the health and welfare rates will be slightly lower. Following President Obama's signing of Executive Order 13706, the DOL issued a Final Rule in accordance with Executive Order on Sept. 30, 2016.

EFFECTIVE: 7/25/2017

CONTINUED FROM PAGE 12

QUARTERLY REGULATORY UPDATE

[NASA PROGRAM MAKES BUYING LEGITIMATE IT EASIER](#)

KEY DETAILS: NASA has launched a new program to help buyers using its government-wide IT contract verify that the products they're buying are from legitimate sources, enforcement practice or policy.

NASA unveiled the Established Authorized Reseller Program for its billion-dollar Solutions for Enterprise-Wide Procurement vehicle, better known as SEWP. The program limits certain contracts to companies specifically authorized to re-sell technology products to the federal government. Non-authorized sellers, then, will be restricted from sending quotes for certain products if the original manufacturer already has an authorized reseller, according to NASA.

EFFECTIVE: 7/31/2017

[NDAA FOR FY 2018 INCLUDES ACQUISITION REFORMS THAT PRESENT POTENTIAL RISKS AND BENEFITS FOR FEDERAL CONTRACTORS](#)

KEY DETAILS: On Dec. 12, 2017, President Trump signed into law the National Defense Authorization Act (NDAA) for 2018. The provisions include reforms for defense contract auditing,

negotiated procurement process changes, expansion of commercial item and service contracting, increasing non-tradition procurement under OTA and modernizing federal IT. The NDAA directs DoD to begin using private auditors to perform incurred cost audits in order to reduce backlog and focus on DCAA resources on forward pricing audits for a higher rate of return. FY 2018 NDAA also includes revisions to the DFARS that will enhance post-award debriefings including the right to receive a redacted copy of the Agency's written source selection award determination and ask follow-up questions. Revisions to the DFARS also include two additional circumstances in which the DoD may use LPTA source selection criteria: when DoD would realize little or no additional innovation or future technological advantage, and in the procurement of goods, goods are expendable in nature or have a short life expectancy. The DoD is now required to contract with online marketplaces for the procurement of certain commercial-off-the-shelf (COTS) products. The effects of marketplace acquisitions on mandatory sourcing obligations such as the Javits-Wagner-O'Day Act, the Berry Amendment, or the Buy American Act remain unclear. The DoD is also allowed to enter into longer service contracts. For certain services, service contracts may be up to 10 years and extended for five additional one-year terms.

EFFECTIVE: 12/12/2017

EXECUTIVE ORDERS

[THE IMPLEMENTATION OF WHITE HOUSE'S BUY AMERICAN POLICY IS UNDERWAY: WHAT FEDERAL CONTRACTORS SHOULD KNOW](#)

KEY DETAILS: The administration's Buy American and Hire American Executive Order and OMB's implementing guidance are intended to maximize the sourcing of domestically manufactured products and minimize the use of waivers, but still leave agencies the discretion to authorize exceptions in specific situations. OMB's guidance allows agencies to waive the order when it is in the public interest to do so, and leaves in place other exceptions to the Buy American Act for purchases at or below the micro-purchase threshold, or procurements for use outside of the United States. Trade Agreements Act waivers also remain in effect.

EFFECTIVE: 6/30/2017

[PRESIDENTIAL EXECUTIVE ORDER ON ASSESSING AND STRENGTHENING THE MANUFACTURING AND DEFENSE INDUSTRIAL BASE AND SUPPLY CHAIN RESILIENCY OF THE UNITED STATES](#)

KEY DETAILS: President Trump signed an executive order to launch a cross-government study of the country's manufacturers and whether they can fully supply the military's needs essential to national security. The Secretary of Defense will coordinate with other government agencies to provide an unclassified report detailing results of the assessment. It is unclear whether the report will examine the Defense Department's acquisition process, but according to presidential advisor Peter Navarro, it is a possibility. The report is due to the president in nine months.

EFFECTIVE: 7/21/2017

SIGNIFICANT ACCOUNTING & REPORTING UPDATES



The Financial Accounting Standards Board (FASB) recently posted a Q&A stating its staff would not object to private companies and not-for-profit entities applying SAB 118 on the application of Topic 740 in the reporting period that includes the date on which the 2017 Tax Cuts and Jobs Act was signed into law. The Q&A is available [here](#).

The Securities and Exchange Commission (SEC) staff issues statements expressing a view on applying topics in the FASB Accounting Standards Codification (ASC) and/or disclosure requirements through staff accounting bulletins (SABs). These statements represent the practices and interpretations followed by the SEC staff. Historically, even though the SEC staff's views and interpretations aren't directly applicable, private companies and not-for-profit entities have chosen to apply the guidance in the SABs.

When the 2017 Tax Cuts and Jobs Act (Act) was signed into law, the SEC staff released SAB 118 for applying Topic 740, *Income Taxes* as it relates to the Act. SAB 118 outlines the approach companies may take if they determine that the necessary information is not available (in reasonable detail) to evaluate, compute and prepare accounting entries to recognize the effect(s) of the Act by the time the financial statements are required to be filed. Companies may use this approach when the timely determination of some or all of the income tax effect(s) from the Act is incomplete by the due date of the financial statements. SAB 118 also prescribes disclosures that reporting entities must provide in these circumstances.

The FASB staff would not object to private companies and not-for-profit entities applying SAB 118, which the staff believes complies with generally accepted accounting principles. This view is based upon the historical application of SABs by private companies and not-for-profit entities.

The FASB staff also believes that a private company or not-for-profit entity opting to apply SAB 118 would need to do so in its entirety, including the disclosure requirements. Such reporting entity should also disclose its accounting policy of applying SAB 118.

The FASB issued ASU 2018-02, *Income Statement – Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income* to provide entities an option to reclassify certain "stranded tax effects" resulting from the recent U.S. tax reform from accumulated other comprehensive income to retained earnings. This new standard is available [here](#), and it takes effect for all entities in fiscal years beginning after Dec. 15, 2018, and interim periods within those fiscal years. Early adoption is permitted.

MARK YOUR CALENDAR...

MARCH

March 29
BDO Webinar: Preparation of Incurred Costs Submissions*
[Register here](#)

APRIL

April 19
28th Annual Government Procurement Conference
 Walter E. Washington Convention Center
 Washington D.C.

April 22 – 24
PSC 2018 Annual Conference*
 The Greenbrier Resort
 White Sulphur Springs, W.Va.

April 26 – 27
Unanet Champions Conference 2018*
 Ritz Carlton
 Tysons Corner, Va.

MAY

May 7 – 8
2018 Navy Contracting Summit
 Norfolk Waterside Marriott
 Norfolk, Va.

May 9
Negotiating Skills for Government Contractors
 Hyatt Regency La Jolla at Aventine
 La Jolla, Calif.

May 10
10th Annual SECAF Awards Gala
 McLean Hilton
 McLean, Va.

May 17
ESOP for Government Contractors*
 Greensboro Conference Center
 McLean, Va.

May 30
EVM World Workshop 2018*
 The Westin Fort Lauderdale Beach Resort
 Fort Lauderdale, Fla.

** indicates BDO is hosting or attending this event*

DID YOU KNOW...



According to [Bloomberg Government](#), analysts expect 55 percent of the increases in the president's fiscal 2018 and 2019 budget requests will be spent on contracts.

A recent survey shows the Government Contractor Confidence Index is at 122.1, the highest level since [Washington Technology](#) launched the survey in 2015.

Industry leaders are pushing Congress for a simplified, standardized vetting process for Department of Homeland Security contractors, reports [Federal News Radio](#).

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