Wiley Rein LLP

# GOVERNMENT CONTRACTS ISSUE UPDATE

Summer 2015

## *View From Our Clients:* Current State of M&A Activity in the Government Contracts Market

Jon W. Burd & John R. Prairie

*View From Our Clients* is a new feature in the *Government Contracts Issue Update* that we are excited to introduce. The articles will cover various topics of interest to the government contracts community based on non-attribution interviews with clients and friends of the firm. The purpose is simple—to find out more about the issues that "keep you up at night" and to get your insights on the hot topics of the day. Going forward, we hope to use this feature as another way to engage with you on the issues you care about most, and to allow us to serve as a clearinghouse for you to exchange information and insights with our readers and clients. If you are interested in participating in a future *View From Our Clients* article, or have suggestions or requests for topics, please contact us. We welcome your input.

This article addresses mergers and acquisitions (M&A) activity in the government contracts market. Although dealmaking has been somewhat tempered in recent years as a result of budget pressures and sequestration, some commentators have predicted a resurgence of activity in the near term as large, established companies look to put excess cash to use and achieve growth by entering emerging markets. We interviewed clients with significant M&A experience on both the buy and sell side, and in a variety of roles, including in-house counsel and business and finance executives. These are the five issues on the top of their minds.

### Budget and Revenue Uncertainty

A consistent theme we heard is the difficulty in valuing government contractors in light of the current budget situation. Although the absolute dollar figures in play can be huge, there is still significant uncertainty in the market. For instance, the President's budget for Fiscal Year 2016 provides $561 billion in base discretionary funding for national defense, but that figure is $38 billion above sequestration levels. No one knows from where the $38 billion in sequester cuts will come.

In addition to (or perhaps, because of) the continuing budget uncertainty, there appear to be two new norms in government procurement, at least for the time being—delay and LPTA [Low Price Technically Acceptable procurements]. Agencies are taking even longer than usual to develop requirements and get RFPs on the street, and evaluations and source selections drag on longer than expected. Even in "hot" areas, like cybersecurity and health IT, risk-averse government buyers often delay acquisitions to avoid making a premature choice with scarce dollars on the "wrong" technologies that may soon be overtaken by newer or better options. Some contractors have been fortunate to maintain or even grow top line revenues in recent years, but the increased use of LPTA competitions (plus a growing trend in "best value" procurements awarded to the lowest bidder) has increased pressure on bottom-line margins.

As a result of these issues, government contractors that also have a foot in the commercial market, like multi-industrials, have become much more attractive targets, as their broader and more diverse revenue base can help withstand the uncertainties of the government market.

continued on page 2

ALSO IN THIS ISSUE

3 Supreme Court Takes up Case Addressing Contract Preferences for Veterans

4 Wiley Rein and Professional Services Council Discuss Concerns about Proposed Fair Pay and Safe Workplaces Rule and Guidance

5 Seventh Circuit Holds "Implied Certifications" Do Not Create False Claims Act Liability and Deepens Circuit Split

6 Federal Grants and the False Claims Act: Eighth Circuit Decision Shows Communication with Your Granting Agency Can Help Avoid Liability

7 Be Careful What You Wish For: GSA's Proposal to Replace the Price Reductions Clause Generates Widespread Criticism

9 Speeches & Publications

*continued from page 1*

### Rising Valuations

One industry veteran we spoke with likened the current transactional market to "house flipping," where buyers are interested in acquiring instant growth through acquisitions, and are also willing to take risks in segments of the industry (particularly IT) where it is possible to disrupt the market with emerging technologies. This appetite for risk is coupled with historically low interest rates that make debt financing appealing, especially for strategic acquisitions. The consequence has been a sharp rise in valuations, with companies trading at higher multiples above EBITDA. For income-oriented investors, this increases pressure on profitability, even at a time when overall revenues may be declining. Many whom we spoke with wondered whether the steadily increasing valuations would lead to a "course-correction" featuring a rapid decline in valuations over a short period, especially if profitability stalls and short-term income investors leave the market for higher returns elsewhere. They anticipated an opportunity for a flurry of dealmaking involving strategic buyers with large cash reserves.

### Regulatory Considerations

The regulatory approvals process is always an unpredictable obstacle that can inject unplanned delays and transaction costs into a deal. One criticism that we heard was the "surprise" that is part of various approval processes—such as Hart-Scott-Rodino pre-merger notifications and approvals, CFIUS and DSS FOCI reviews regarding foreign investment, and even the novation process—where there seems to be little rhyme or reason for why the government expresses significant concerns in some transactions that seem low-risk, but comparatively little interest in others. The absence of clear trends makes it difficult to predict where the problems or delays will occur and increases the risk that cost and schedule impacts could arise in transactions that seem relatively low-risk. Clients shared their frustration at the lack of transparency by the government in these areas, which often forces them to incorporate unnecessary contingencies into the deal timeline. We also heard concerns about the motivating factors for government resistance to deals, based on perceptions that government regulatory interest in a transaction can be ratcheted up by third-party complaints from industry competitors, suppliers, or other (non-governmental) customers of the parties to a deal.

### Extended Dealmaking and Due Diligence Timeline

There is a perception that deals are taking longer to consummate because buyers are more averse to risk that a seller's contract backlog will erode, or that valuable product lines could fall prey to the "creative destruction" process and be overtaken by a better, emerging technology. From a seller's perspective, these longer transaction periods place more stress on the seller's revenue projections and the integrity of the contract backlog. One contributing factor to the extended timeline may be the entry of new investment capital into the government contracts space, where investors may lack depth or experience in government contracts due diligence issues and proceed more cautiously. One client suggested that all of these factors are particularly prevalent in the market for software and IT products, where competition is fierce and endless product and technology evolution leads to an aggressive natural selection process.

### Post-Deal Integration

Finally, an often overlooked—but absolutely critical—aspect of dealmaking is post-deal integration. Many good deals on paper have quickly turned sour in practice as a result of poor planning or execution of the integration process. Long before the deal is closed, the principals have to assess how the post-deal organization is going to fit together and operate going forward. Communication and transparency with incumbent employees are also key. Transition periods are challenging and stressful at the human level, and in the absence of information about a post-transaction integration process, employees may assume the worst and default to self-preservation mode. While outside consultants and FAQs can be used to provide some limited communication benefit, there is no real substitute for engaging employees on the division or factory level to ensure they understand what the transaction means for them. ■

For more information, please contact:

Jon W. Burd
202.719.7172
jburd@wileyrein.com

John R. Prairie
202.719.7167
jprairie@wileyrein.com

# Supreme Court Takes up Case Addressing Contract Preferences for Veterans

By: John R. Prairie and Margaret E. Matavich

Government contractors will have reason to pay attention to the Supreme Court argument calendar next term. In a rare occurrence, on June 22, 2015, the Supreme Court agreed to hear a government contracts case, granting the petition for certiorari of a Service-Disabled Veteran-Owned Small Business (SDVOSB) in *Kingdomware Technologies, Inc. v. United States.* The case involves a dispute over the Department of Veterans Affairs' (VA) implementation of the mandatory set-aside provisions in the Veterans Benefits, Health Care and Information Technology Act of 2006 (the Act). The VA contends that the Act does not require Veteran-Owned Small Business (VOSB) set-asides for orders placed against federal supply schedule (FSS) contracts; Kingdomware, and other VOSBs, disagree. The Court's decision to grant cert in this case is noteworthy for several reasons, including that it involves a purely government contracts issue (indeed, one that arose in multiple bid protests); there is not a traditional "circuit split;" and the policy issues at stake relate only to VA contracts.

The case has an interesting history. Kingdomware originally filed multiple protests at the Government Accountability Office (GAO) over the VA's failure to apply the Act's "Rule of Two" set-aside criteria before using the FSS on a full and open basis. GAO sustained a Kingdomware protest, finding that the set-aside requirements were mandatory for all procurements, but the VA did not follow GAO's recommendation. Kingdomware thus filed another protest at the Court of Federal Claims (COFC), which disagreed with GAO and found that the Act had no effect on the VA's use of FSS procurements. After the Federal Circuit affirmed the COFC's ruling, Kingdomware filed its petition for cert asking the Supreme Court to weigh in.

Since the Federal Circuit is the only appellate court with jurisdiction over this dispute, there is not a traditional "circuit split" for the Supreme Court to resolve. But the conflicting interpretations of the Act by GAO and the Federal Circuit have created a "split," of sorts, pitting Congress' watchdog against the federal judiciary and executive branch. Indeed, over the course of a little more than a year, GAO sustained 17 protests based on this issue, recommending each time that the VA apply the mandatory set-aside requirements to FSS purchases in order to comply with the Act. The VA repeatedly declined to follow GAO's recommendation, and GAO ultimately announced that it would no longer hear bid protests on the issue because of the inability for protestors to obtain meaningful relief.

Since the case involves small business contracting goals and VOSBs, there are certain policy issues at stake. Although the COFC and the Federal Circuit disagreed somewhat over the proper interpretation of the Act, in backing the VA both courts found that Congress intended the VA to have discretion in how it meets annual VOSB contracting goals. The Government has also argued that requiring application of the Rule of Two to FSS purchases would lead to significant delays and economic inefficiencies in the VA's purchase of the most basic items, such as a griddle and food slicer.

For its part, Kingdomware accuses the Federal Circuit of violating the Supreme Court's teaching that "shall" is mandatory. (The statute provides, "a contracting officer of the Department *shall award* contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.") Kingdomware also argues that the mandatory set-aside requirement is important to the nation's veterans and affects billions of dollars in contracting opportunities for VOSBs and SDVOSBs—opportunities that VOSBs and SDVOSBs will be less likely to obtain without the benefit of set-asides. Kingdomware also contends that the VA's interpretation of the Act contravenes the VA's own regulations, which support the mandatory nature of the Rule of Two analysis.

The parties will brief the merits over the next several months. The argument will be heard during the Supreme Court's October 2015 Term. ■

For more information, please contact:

John R. Prairie
202.719.7167
jprairie@wileyrein.com

Margaret E. Matavich
202.719.3756
mmatavich@wileyrein.com

# Wiley Rein and Professional Services Council Discuss Concerns about Proposed Fair Pay and Safe Workplaces Rule and Guidance

By Craig Smith

On June 23, 2015, Wiley Rein and the Professional Services Council (PSC) co-sponsored a panel discussion on recent regulatory developments concerning Executive Order 13673: Fair Pay and Safe Workplaces. Rand L. Allen, the chair of Wiley Rein's Government Contracts practice, joined PSC representatives in highlighting key concerns about the implementing rule recently proposed by the Federal Acquisition Regulatory (FAR) Council and accompanying guidance proposed by the Department of Labor (DoL).

As proposed, the FAR rule will require contractors and subcontractors to disclose a wide range of labor law violations when competing for and then performing most federal contracts and subcontracts over $500,000. The contracting officer and prime contractor then must analyze any disclosed violations when making pre-award assessments of the responsibility of prospective contractors and subcontractors, respectively. DoL's proposed guidance attempts to define key terms in the proposed FAR rule and to provide additional insight into how the proposed FAR rule should work, although DoL has deferred defining perhaps the most critical term in the proposed rule: the hundreds of "equivalent state laws" of which contractors and subcontractors will also be required to disclose violations.

The presentation covered many concerns raised by the panelists and the attendees (which represented a cross-section of the services sector), including the following:

- The proposed rule and guidance impose a costly solution across the entire contracting base to address a problem that may not exist or be nearly as extensive as asserted.
- The proposed rule potentially adds a remedy (*i.e.,* ineligibility for federal contracts) that goes beyond what was authorized by each of the underlying labor laws.
- The proposed rule requires prime offerors to publicly disclose any determinations of violations regardless of whether the determination was confidential (e.g., confidential arbitration), under appeal or review, preliminary, etc.
- The definitions of the categories of violations described in the proposed rule and guidance are very broad so as to encompass seemingly minor violations.
- It is unclear how newly required agency personnel, called agency labor compliance advisors, will develop the needed familiarity with the relevant labor laws or will complete a meaningful analysis of a contractor's labor violations as required by the proposed rule and guidance.
- The proposed rule/guidance emphasize consideration of "labor compliance agreements" with little guidance on the form or substance of such agreements, when they should be considered or required, or how they might relate to administrative agreements with SDOs.
- The proposed rule and guidance establish processes that largely duplicate the functions of agency suspending and debarring officials (and, to a lesser degree, enforcement agencies) without the independence, coordination, and due process provided through the suspension and debarment mechanisms.

Comments on the proposed rule and guidance are due July 27, 2015. If the rule and guidance are implemented as proposed or in substantially similar form, contractors should expect to shoulder significant compliance burdens as a result. Wiley Rein expects the possibility of litigation over the proposed rule and guidance, especially given the substantial costs and significant overreach that the proposed terms represent. ■

For more information, please contact:

Craig Smith
202.719.7297
csmith@wileyrein.com

# Seventh Circuit Holds "Implied Certifications" Do Not Create False Claims Act Liability and Deepens Circuit Split

By Roderick L. Thomas and Shane B. Kelly

The U.S. Court of Appeals for the Seventh Circuit recently rejected the "implied certification" theory of liability under the False Claims Act (FCA) in *United States v. Sanford-Brown, Limited,* No. 14-2506 (7th Cir. June 8, 2015), a decision that has broad implications for government contractors worried about the reach of the FCA and widens a circuit split on the issue.

The case involved a for-profit educational institution, Sanford-Brown College, that entered into a Program Participation Agreement (PPA) with the U.S. Secretary of Education as a part of obtaining federal educational subsidies. The PPA required compliance with a variety of statutory and regulatory regimes, including Title IV of the Higher Education Act. The relator, Sanford-Brown's former Director of Education, alleged that the defendants engaged in recruiting and retention practices that violated Title IV regulations, which in turn meant that the PPA was being violated, and for that reason, defendants were no longer eligible for any of the subsidies they received. The relator argued that the resulting claims for subsidies, which numbered in the thousands, were false claims under two theories.

First, the relator argued that the PPA was a false record in support of a claim for payment under 31 U.S.C. § 3729(a)(1)(B) because Sanford-Brown did not abide by its commitments in that agreement. The Seventh Circuit rejected this theory, finding that the relator provided no evidence whatsoever that Sanford-Brown had entered into the PPA knowing that it would not comply and intending to defraud the government, and "promises of future performance do not become false due to subsequent non-compliance."

Second, the relator argued that Sanford-Brown presented false or fraudulent claims for payment or approval under 31 U.S.C. § 3729(a)(1)(B). Under this theory, Sanford-Brown's initial certification in the PPA promising to comply with the Title IV restrictions meant that each request for payment acted as an implied certification that it was continuing to do so. The key question was whether the requirements of the PPA were merely "conditions of participation" that the Department of Education could enforce administratively or also "conditions of payment" that made each request for subsidies fraudulent when the defendants were no longer complying with the PPA's terms. The Seventh Circuit held that the myriad statutory and regulatory requirements in the PPA were conditions of participation and if an educational institution signed the PPA in good faith, then subsequent violation of its requirements did not create false claims.

The court made clear that this holding was a rejection of the so-called "doctrine of implied false certification" that treats an invoice submitted to the government as an implicit certification that the contractor has complied with all possible applicable regulations and performance requirements incorporated in the contract. The Court explained, "we conclude that it would be... unreasonable for us to hold that an institution's continued compliance with the thousands of pages of federal statutes and regulations incorporated by reference into the PPA are conditions of payment for purposes of liability under the FCA. Although a number of other circuits have adopted this so-called doctrine of implied false certification,... we decline to join them." This ruling is good news for government contractors, who are generally subject to a web of statutory and regulatory requirements in any government procurement. Now, at least in the Seventh Circuit, a contractor's failure to meet all contractual and regulatory requirements does not automatically make claims for payment under the related contract "false."

In holding that merely requesting payment does not imply compliance with a contract and the regulatory requirements it incorporates, the Seventh Circuit hardened a circuit split on this issue. Most U.S. Court of Appeals have held that, at least in some circumstances, requesting payment creates an implied representation that the entity is continuing to comply with the obligations on which the request is based. However, this approach to FCA liability risks making every contract dispute into a FCA matter, as any knowing breach of contract requirements could make claims for payment "false." The Seventh Circuit joined the Fifth Circuit in declining to recognize such a doctrine of "implied certification." Until now, the Seventh Circuit had refrained from taking one side or the other on the

continued on page 6

# Federal Grants and the False Claims Act: Eighth Circuit Decision Shows Communication with Your Granting Agency Can Help Avoid Liability

John R. Prairie & Margaret E. Matavich

Consistent with a trend we reported on *earlier this year*, a recent case decided by the U.S. Court of Appeals for the Eighth Circuit emphasizes the risks to federal grant recipients of False Claims Act (FCA) actions, and proves that frequent communication with the Government can save grantees a lot of trouble in the long run. In an *Eighth Circuit decision* issued on May 29, 2015, the court affirmed the district court's decision dismissing a *qui tam* suit brought against a federal grantee by a former employee, who alleged that the grantee made false statements to the agency in its grant application. In dismissing the case, both courts relied heavily on the grantee's ongoing communication with the agency during performance regarding how it was using the funds, reasoning that the grantee did not make "false" statements if the agency knew what the grantee was doing. Although the grantee ultimately prevailed, the case demonstrates that just as with government contractors, federal grantees' use of federal funds is subject to intense scrutiny by the Government and potential whistleblowers.

By way of background, the *qui tam* suit was based on the grantee's application for a three-year grant from the National Telecommunications and Information Administration (NTIA), an agency of the U.S. Department of Commerce. The grant's purpose was to increase broadband accessibility in northern Missouri. The relator claimed the grantee knowingly made false statements in its grant application to NTIA which were material to the agency's decision to award the grant to the grantee. The relator further alleged that the grantee implemented the grant in a manner substantially different from what the grantee told NTIA it would do in its grant application.

Specifically, the relator's allegations were based on the application requirement that the grantee provide matching funds for more than $19 million in project-related costs, either through cash or in-kind contributions. The grantee provided a projected budget naming potential sources of matching funds and in-kind contributors in its application. The relator alleged, among other things, that the grantee: asserted that one contributor could provide certain matching funds, even though the grantee knew the contributor did not intend to provide the funding; falsely classified an exchange with the state of Missouri as an "in-kind contribution" when the grantee knew the exchange was not in-kind; promised that certain individuals would not manage the grantee's participation in the grant, when in fact they did manage the participation; and knowingly

continued on page 7

***Seventh Circuit Holds "Implied Certifications" Do Not Create False Claims Act Liability and Deepens Circuit Split*** *continued from page 5*

issue, but now its position is clear.

This growing divide could result in intervention by the U.S. Supreme Court to clarify the boundaries of FCA liability. Circuit splits are always a cause of concern to the high court, and in recent years the Supreme Court has shown that it is willing to shape the boundaries of FCA jurisprudence. Just this last term, the Supreme Court in *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter,* 135 S. Ct. 1970 (2015), resolved a circuit split by ruling that successive *qui tam* actions are permitted under the FCA. The court in *Carter* also restored the proper function of the FCA statute of limitations provisions by holding that the Wartime Suspension of Limitations Act does not apply to civil FCA claims, even without a circuit split on that issue. It could be that implied certification, now the subject of a clear circuit split, will be the next aspect of the FCA on which the Supreme Court weighs in. ■

For more information, please contact:

Roderick L. Thomas
202.719.7035
rthomas@wileyrein.com

Shane B. Kelly
202.719.7506
skelly@wileyrein.com

# Be Careful What You Wish For: GSA's Proposal to Replace the Price Reductions Clause Generates Widespread Criticism

Kevin J. Maynard

For years, General Services Administration (GSA) Schedule contractors and government officials alike have criticized the GSA Schedule Price Reductions Clause (PRC) as ambiguous, burdensome and ultimately ineffective. In fact, the MAS Advisory Panel—a blue ribbon panel of procurement experts representing both government and industry—issued a report in February 2010 recommending that GSA eliminate the PRC, and instead rely on competition at the task order level to establish fair and reasonable prices. In March of this year, GSA unveiled a proposal to finally eliminate the PRC and its much maligned "tracking customer" requirement, and replace it with a new "Transactional Data Reporting" clause. Unfortunately, while this proposed rule may eliminate certain compliance burdens that have plagued the PRC, it raises an entirely new set of concerns and potential compliance obligations that Schedule holders will have to grapple with if this proposed rule goes forward.

GSA's proposed Transactional Data Reporting clause is part of OFPP's broader "Category Management" initiative, which seeks to eliminate contract duplication and deliver best value to federal customers and the taxpayer by managing the government's procurement of commonly purchased goods and services on the basis of broad "categories" like information technology (IT) hardware and IT software. One element of GSA's strategy for implementing Category Management is to provide government buyers with more information regarding the prices paid by other

continued on page 8

***Federal Grants and the False Claims Act: Eighth Circuit Decision Shows Communication with Your Granting Agency Can Help Avoid Liability*** *continued from page 6*

redirected the purpose of the grant network away from providing service to specified community anchor institutions.

The grantee ultimately beat the *qui tam* suit because of its continued communication with NTIA regarding its use of the funds throughout its performance of the grant, proving once again that maintaining open lines of dialogue with the granting agency is always the best course of action. For example, the *qui tam* suit alleged that the grantee knowingly redirected the purpose of the grant away from serving community anchor institutes. In dismissing the case, the court cited the grantee's communication with NTIA—which led to NTIA approving the specific institutions the grantee would serve—as an important factor in finding the grantee's application statements were not false. As for the allegation that the grantee misrepresented its funding options in its grant application, the court recognized that NTIA approved the financing the grantee eventually secured, even if that funding was different from that initially proposed. The court also noted that the grantee informed NTIA of its intent to join with another entity to perform the grant, and that NTIA had approved the joint venture while continuing to administer the grant. The court thus determined that the grantee had at all times been open with the government regarding its execution of the grant, which led the court to affirm the lower court's finding that the grantee had not submitted a false statement to the agency—and thus had not violated the FCA.

This case is an important lesson for federal (as well as state and local) grant recipients. Even though the grantee ultimately defeated the FCA allegations, it took over three years and a trip to the Eighth Circuit to prevail. Given the significant penalties associated with FCA liability, and the substantial cost of litigation even when the *qui tam* allegations are baseless, federal grantees must remain proactive in ensuring compliance with all conditions in grant applications and awards, and communicate early and often with the government during the course of grant performance. As this case proves, sometimes an ounce of prevention is worth a pound of cure. ■

For more information, please contact:

John R. Prairie
202.719.7167
jprairie@wileyrein.com

Margaret E. Matavich
202.719.3756
mmatavich@wileyrein.com

government customers—so called "horizontal pricing information," which according to GSA will eliminate "price variation" and drive Schedule holders to reduce prices.

To meet this goal, the proposed Transactional Data Reporting clause would eliminate the PRC's tracking customer requirements, and in its place require Schedule holders (as well as other GSA GWAC holders) to submit monthly reports providing detailed information regarding the prices charged to government customers, including (i) quantity, (ii) unit price, and (iii) total price. Although the proposed rule does not call for an automatic price reduction based on the prices paid by other federal customers, GSA expects the rule will drive down prices because Schedule holders "will know that their customers will have greater market intelligence on what other agencies have paid in similar situations." In addition, the proposed rule specifically allows GSA to "request from the contractor a price reduction at any time during the contract period." Finally, the preamble to the proposed rule suggests that GSA would have the ability to require Schedule holders to submit updated commercial sales practices (CSP) disclosures throughout the life of the Schedule contract, "if and as necessary to ensure that prices remain fair and reasonable in light of changing market conditions."

Although GSA's goals are laudable, and its recognition of the burdens associated with the existing PRC are a welcome development for Schedule holders, the proposed Transactional Reporting clause raises its own set of concerns, as highlighted in recent comments, public meetings, and Congressional hearings regarding the proposed rule:

***Effectiveness of the Proposed Rule.*** Ironically, one unintended consequence of the proposed rule may actually be to limit discounting by Schedule holders at the task order level. At one time, the PRC included sales to federal customers; however, in order to encourage contractors to grant additional discounts on individual Schedule orders, sales to federal customers are excluded from the PRC. In addition, FAR 8.405-4 currently states that "Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual ordering activity...." However, under this proposed rule, Schedule holders may actually be discouraged from offering additional "spot discounts" on individual sales transactions if they know that those discounts will now trigger across-the-board price reductions to all Schedule buyers.

***Lack of Standardization.*** A significant challenge underlying the proposed rule is the lack of standardization, both with regards to the scope of the products and services being sold through various Schedules, as well as the myriad terms and conditions that may impact whether a Schedule contractor grants more favorable discounts on a particular transaction. While the preamble suggests that government buyers will receive "tools and training" to ensure that they consider all of the relevant information (such as terms and conditions, performance levels, customer satisfaction and "total cost") when analyzing transactional pricing reports, the proposed rule provides no mechanism for capturing this information, or standards for ensuring that Schedule buyers conduct an "apples-to-apples" comparison of pricing information.

***Additional Compliance Burdens.*** While the preamble to the rule attempts to minimize the burden of submitting data using a "user-friendly online reporting system," even the GSA OIG has recognized that the rule will impose substantial compliance burdens on contractors to configure their existing systems to ensure that they accurately capture the required data for reporting on a monthly basis. In addition, the new rule suggests that GSA would be able to request updated CSPs at any time during the life of a Schedule contract "to ensure that prices remain fair and reasonable in light of changing market conditions"—a significant change compared to current practice, which requires updated CSPs only at certain defined intervals (e.g., at time of renewal or in connection with certain modifications).

***Confidentiality of Contractor Pricing.*** Finally, a number of commenters have raised concerns regarding the confidentiality of the transactional pricing information to be submitted under this proposed rule—particularly unit pricing information, which many courts have recognized as exempt from public disclosure under FOIA Exemption 4 and the Trade Secrets Act, given the risk that competitors will use such information to underbid or that customers will use it to "ratchet down" prices. Despite these concerns, GSA's

continued on page 9

website actually suggests that this information will be made available to competitors, to allow them to "see where their competition is and adjust their prices to remain competitive." (http://www.gsa.gov/portal/content/213211). While GSA highlights this as a way to make it easier for companies (especially small businesses) to do business with the federal government, this raises serious questions about contractors' ability to protect their proprietary information.

In light of these and other concerns, the proposed Transactional Reporting rule has generated widespread criticism from both industry and Government—including the GSA OIG, which not surprisingly opposed the elimination of the PRC.

Whether these concerns will result in any changes to the proposed rule remains to be seen. If GSA carries through with its proposed plan to replace the PRC, schedule holders will nonetheless face new issues and compliance requirements — proof of the old adage, "be careful what you wish for." ■

For more information, please contact:

Kevin J. Maynard
202.719.3143
kmaynard@wileyrein.com

# SPEECHES & PUBLICATIONS

"Surviving a Congressional Investigation and Practical Guidance for State Legislative Investigations"
**Dorthula H. Powell-Woodson,** Speaker
**Ralph J. Caccia,** Speaker
2015 Blue National Summit
April 20, 2015 | Phoenix, AZ

"Government Contracting Demystified: Confidently Contracting for Government Healthcare Programs"
**Dorthula H. Powell-Woodson,** Speaker
**Rachel A. Alexander,** Speaker
2015 Blue National Summit
April 21, 2015 | Phoenix, AZ

"Business Partner and Practitioner: The Lawyer's Role in Contracting for Government Health Care Programs"
**Dorthula H. Powell-Woodson,** Speaker
**Rachel A. Alexander,** Speaker
2015 Blue National Summit
April 21, 2015 | Phoenix, AZ

"Recent Developments in Small Business Contracting"
**John R. Prairie,** Speaker
**George E. Petel,** Speaker
NCMA Bethesda/Medical Chapter
May 20, 2015 | Rockville, MD

"GovCon Industry Update"
**Nicole J. Owren-Wiest,** Panelist
20th Annual Government Contracting Annual Update: Looking Back and Focusing Forward
May 21, 2015 | Tysons, VA

continued on page 10

"Decade of Disaster: Keys to Sound Management of Emergency/Urgent Government Contracts"
**Richard O'Keeffe**
Contract Management
JUNE 2015 | JUNE 2015 ISSUE

"The Government Contracts Intellectual Property Workshop"
**Scott A. Felder,** Instructor
**Nicole J. Owren-Wiest,** Instructor
Federal Publications Seminars
JUNE 2-4, 2015 | SAN DIEGO, CA

"Federal Appropriations Law: Transfers and Reprogramming"
**Scott A. Felder,** Instructor
Department of Defense, Office of Inspector General, Comptroller Accreditation Course
JUNE 10, 2015 | FT. BELVOIR, VA

"Fun with the FAR"
**Kara M. Sacilotto**
Public Contracting Institute
JUNE 10, 2015

"M&A in Government Contracting: How to Navigate a Transaction, Before and After, with a Focus on 'What Matters'"
**Kay Tatum**
Government Contracting Conference 2015 of the Greater Washington Society of CPAs
JUNE 11, 2015

"View from Wiley Rein: Are Your Policies Inadvertently Discouraging Reporting of Fraud, Waste, or Abuse?"
**Kara M. Sacilotto**
**Tyler E. Robinson**
Bloomberg BNA's Federal Contracts Report
JUNE 11, 2015

"Introduction to Government Contracts Law"
**Scott A. Felder,** Instructor
The 168th Contract Attorneys Course, The Judge Advocate General's Legal Center & School
JUNE 14-24, 2015 | CHARLOTTESVILLE, VA

"COFC Litigation"
**Scott A. Felder,** Panel Moderator
The 168th Contract Attorneys Course, The Judge Advocate General's Legal Center & School
JUNE 14-24, 2015 | CHARLOTTESVILLE, VA

"The Contract Disputes Act"
**Scott A. Felder,** Instructor
The 168th Contract Attorneys Course, The Judge Advocate General's Legal Center & School
JUNE 14-24, 2015 | CHARLOTTESVILLE, VA

"Intellectual Property"
**Scott A. Felder,** Instructor
The 168th Contract Attorneys Course, The Judge Advocate General's Legal Center & School
JUNE 14-24, 2015 | CHARLOTTESVILLE, VA

continued on page 11

"The View of the Suspension and Debarment Process from the SDO's Office"
**Paul F. Khoury,** Moderator
ABA Public Contracts Section, Suspension and Debarment Committee
June 19, 2015 | Washington DC

"Fair Pay and Safe Workplaces Executive Order Program"
**Rand L. Allen**
hosted by Wiley Rein and Professional Services Council
June 23, 2015 | McLean, VA

"Government Contracts: The Changing Landscape"
**Scott M. McCaleb,** Moderator
Federal Circuit Bench & Bar
June 27, 2015 | Dana Point, CA

"View from Wiley Rein: How Should the Service Contract Act Apply to Commercial-Item Services?"
**Eric W. Leonard**
**Craig Smith**
Bloomberg BNA's Federal Contracts Report
July 2015

"Advanced Government Contracts Administration Workshop"
**Daniel P. Graham,** Instructor
**Kevin J. Maynard,** Instructor
Federal Publications Seminars
July 22-23, 2015 | Hilton Head Island, SC

"Department of Labor Enforcement on the Rise – Preparing for a Service Contract Act Compliance Audit"
**Eric W. Leonard**
**Craig Smith**
National Contracts Management Association World Congress
July 28, 2015 | Dallas, TX

"Contract & Procurement Fraud: Best Practices to Minimize the Risks of a Government Investigation"
**Nicole J. Owren-Wiest,** Speaker
American Conference Institute
July 29, 2015 | Washington, DC

"How Did We Do This? – Nuts and Bolts of the Due Diligence Process in Government Contracts"
**Jon W. Burd,** Moderator
ABA Section of Public Contract Law Annual Meeting
July 30, 2015 | Chicago, IL

"Acquisition Reform"
**Tracye Winfrey Howard,** Speaker
ABA Section of Public Contract Law Annual Meeting
August 1, 2015 | Chicago, IL

"Effective Trial Techniques"
**Paul F. Khoury,** Panelist
Court of Federal Claims Judicial Conference
September 24, 2015 | Washington DC

# Government Contracts Team

## Partners/Of Counsel

| | | |
|---|---|---|
| Rand L. Allen, Chair | 202.719.7329 | rallen@wileyrein.com |
| William A. Roberts, III, Co-Chair | 202.719.4955 | wroberts@wileyrein.com |
| Rachel A. Alexander | 202.719.7371 | ralexander@wileyrein.com |
| Kathryn Bucher | 202.719.7530 | kbucher@wileyrein.com |
| Jon W. Burd | 202.719.7172 | jburd@wileyrein.com |
| Ralph J. Caccia | 202.719.7242 | rcaccia@wileyrein.com |
| Philip J. Davis | 202.719.7044 | pdavis@wileyrein.com |
| Scott A. Felder | 202.719.7029 | sfelder@wileyrein.com |
| Daniel P. Graham | 202.719.7433 | dgraham@wileyrein.com |
| Tracye Winfrey Howard | 202.719.7452 | twhoward@wileyrein.com |
| Paul F. Khoury | 202.719.7346 | pkhoury@wileyrein.com |
| Eric W. Leonard | 202.719.7185 | eleonard@wileyrein.com |
| Kevin J. Maynard | 202.719.3143 | kmaynard@wileyrein.com |
| Scott M. McCaleb | 202.719.3193 | smccaleb@wileyrein.com |
| Richard B. O'Keeffe, Jr. | 202.719.7396 | rokeeffe@wileyrein.com |
| Nicole J. Owren-Wiest | 202.719.7430 | nowrenwiest@wileyrein.com |
| Dorthula H. Powell-Woodson | 202.719.7150 | dpowell-woodson@wileyrein.com |
| John R. Prairie | 202.719.7167 | jprairie@wileyrein.com |
| Kara M. Sacilotto | 202.719.7107 | ksacilotto@wileyrein.com |
| Kay Tatum | 202.719.7368 | ktatum@wileyrein.com |
| Roderick L. Thomas | 202.719.7035 | rthomas@wileyrein.com |
| Jennifer S. Zucker | 202.719.7277 | jzucker@wileyrein.com |

## Other Professionals

| | | |
|---|---|---|
| John A. McCullough, Special Counsel | 202.719.7254 | jmccullo@wileyrein.com |
| Erin K. Nord, Consulting Counsel | 202.719.7183 | enord@wileyrein.com |

## Associates

| | | |
|---|---|---|
| J. Ryan Frazee* | 202.719.3751 | jfrazee@wileyrein.com |
| Samantha S. Lee | 202.719.7551 | sslee@wileyrein.com |
| Margaret E. Matavich* | 202.719.7356 | mmatavich@wileyrein.com |
| George E. Petel* | 202.7193759. | gpetel@wileyrein.com |
| Tyler E. Robinson | 202.719.7497 | trobinson@wileyrein.com |
| Nina Rustgi* | 202.719.3761 | nrustgi@wileyrein.com |
| Craig Smith | 202.719.7297 | csmith@wileyrein.com |
| Jillian Volkmar | 202.719.7527 | jvolkmar@wileyrein.com |
| Brian Walsh | 202.719.7469 | bwalsh@wileyrein.com |
| Tara L. Ward | 202.719.7495 | tward@wileyrein.com |
| Gary S. Ward* | 202.719.7571 | gsward@wileyrein.com |

*District of Columbia Bar pending, supervised by principals of the firm.

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