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GOVERNMENT CONTRACTS ISSUE UPDATE

June 2016

Defense Industry Should Be Up in Arms Over Proposed NDAA Bid Protest "Reforms"

By Jon W. Burd

The Senate Armed Services Committee (SASC) renewed its battle against the bid protest process in the 2017 National Defense Authorization Act (S. 2943, Section 821). For years, factions within the Senate have questioned whether increases in the number of bid protests filed with the Government Accountability Office (GAO) have resulted in unnecessary delays or costs to the DOD acquisition process, and advocated for reforms that would shield DOD acquisitions from protest. The latest attempt would erode a pillar of oversight that has long been a key to maintaining a credible, transparent and competitive acquisition system.

As outlined in its proposed 2017 NDAA, the Committee proposes two significant "reforms" to the GAO's bid protest procedures that would penalize unsuccessful protests. The first would affect large defense contractors with "revenues in excess of $100,000,000 during the previous year," and require them to pay GAO's "costs incurred for processing a protest" if the contractor files a protest that GAO denies. The second would affect "incumbent contractors" who file a bid protest related to a follow-on contract and receive a temporary bridge contract or extension for the work "as a result of a delay in award" due to the protest. In those cases, the Committee proposes to impound the protesting contractor's profits for the bridge/extension (*i.e.*, "all payments above incurred costs"), and dole them out to the awardee or GAO unless GAO issues a decision sustaining the protest. These proposed "reforms" are intended to chill defense contractors' interest or willingness to pursue bid protests at GAO by increasing both the cost and business risk of filing an unsuccessful protest.

As discussed below, industry should resist these changes, not only because they are poorly conceived and impractical to implement, but because in the long run they would undermine the integrity of the procurement process. The Committee's concerns do not appear to be based yet on any evidence that DOD has experienced an increase in unwarranted protests by large defense contractors or incumbent contractors, or that the protest process is unduly interfering with DOD's acquisition process. Indeed, in a classic case of "shoot first, ask questions later," the Senate's proposed 2017 NDAA elsewhere calls for a report on bid protest statistics and analysis, to provide insights on the impact of bid protests on the DOD acquisition process; the House Committee on Armed Services Report (H.R. 4909) joined a similar reporting requirement.

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Competition and Climate Change: How the FAR Proposed Rule on Contractor Greenhouse Gas Disclosures Seeks to Influence Both

By Kara M. Sacilotto and Kendra P. Norwood

On May 25, 2016, the Federal Acquisition Regulatory Council (FAR Council) proposed an amendment to the Federal Acquisition Regulation (FAR) that would require certain federal contractors to make annual representations to the Government about whether and where they publicly disclose their greenhouse gas (GHG) emissions and reduction goals. Although the rule would not require federal contractors to directly disclose their emissions data to the Government, it would still require contractors to represent whether such data is publicly available, and if so, where. These provisions could influence not only the outcome of competitions for contract awards where agencies choose to factor these disclosures into their selection decisions, but they could also open the door for additional mandatory disclosures in furtherance of federal climate change policy. These potential impacts, as well as an overview of the rule, are discussed below.

The Rule Would Require Public Disclosures by Major Suppliers, Large, Small and Commercial

The proposed rule would apply to "major suppliers" who received $7.5 million or more in federal contract awards during the preceding government fiscal year. These contractors would be required to indicate in the System for Award Management (SAM) whether they publicly disclose their GHG emissions and reduction goals. The publicly-disclosed data referred to in the rule would consist of a contractor's responses to a greenhouse gas inventory performed in accordance with the Greenhouse Gas Protocol Corporate Standard or its equivalent.

If a contractor represents in SAM that its GHG emissions data is publicly available, the proposed rule would require the contractor to provide the web address to the "publicly accessible Web site" where the data may be found. Under the rule, a "publicly accessible Web site" includes either "the supplier's own Web site" or the website of "a recognized, third-party greenhouse gas emissions reporting program." Vendors could make this disclosure themselves, or through their parent companies.

For federal contractors with annual awards totaling less than $7.5 million, GHG emissions disclosures would be optional, and these contractors could thus opt to disclose their data on a voluntary basis. Based on Fiscal Year 2015 data, the FAR Council expects this rule to impact approximately 5,500 unique business entities, including approximately 2,700 small businesses. According to the FAR Council, this constitutes 3.5% of all entities that did business with the Government in Fiscal Year 2015 and 2.6% of small businesses.

Moreover, the rule proposes making the GHG disclosure requirement applicable to "all solicitations, including solicitations for the acquisition of commercial items (including commercially available off-the-shelf [COTS] items) and items that do not exceed the simplified acquisition threshold." The only exceptions would be solicitations for the contract types referenced in FAR 4.1102(a), which include classified procurements, micro-purchases, and contracts performed outside the United States. In explaining the application of the

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rule to commercial and COTS items, the FAR Council noted that reporting of GHG emissions is increasingly commonplace in the commercial market and, because the reporting is on an annual basis, not by acquisition, excluding such contractors would impair the efficacy of the rule's goal of gathering information and insight on GHG emissions to enable agencies to manage such emissions.

The Rule Is Clearly Intended to Influence Competitions for Federal Procurements

The Government's stated purpose for proposing this rule is to ensure federal procurements take contractor GHG emissions into consideration, as required by President Obama's March 2015 Executive Order (E.O.) 13693, "Planning for Federal Sustainability in the Next Decade." As discussed in the proposed rule, E.O. 13693 requires that the seven largest federal procuring agencies "implement procurements that take into consideration contractor GHG emissions."

According to the FAR Council, there is a need for "greater insight into the scope of GHG management by companies seeking to do business with the Federal Government." The Administration's position on how this rule is intended to advance its climate change priorities is made clear through the statement posted to the White House website on May 25, titled "Making Federal Acquisitions Climate-Smart." Authored by the United States Chief Acquisition Officer, together with senior officials at OMB and the Council on Environmental Quality, the post explains that the proposed rule "leverages the Federal Government's purchasing power to push for this type of unprecedented disclosure." The post also highlights a recent example where GSA "factored-in greenhouse gas intensity (paired with estimated damages from those emissions) to make multi-million dollar contract awards." The post also states that knowing whether and where vendors disclose GHG emissions data will allow the Government to "address climate-risk in the Federal Government's supply chain, and engage with contractors to reduce supply chain emissions." These statements leave little doubt that the Government intends to use disclosed GHG data to drive procurement decisions.

The Rule Seeks to Advance Administration Climate Change Priorities

While directly tied to E.O. 13693, which focuses on federal sustainability, the proposed rule also refers to E.O. 13653, "Preparing the United States for the Impacts of Climate Change," issued in November 2013. The rule states that, "in furtherance" of the 2013 Climate Change E.O., the FAR Council agencies "are considering the development of means and methods to enable agencies to evaluate and reduce climate change related risks" as they relate to agency operations and missions. According to the proposed rule, these efforts are in response to the "growing Federal and public interest" in supplier operations and supply chain risks, including those related to climate change.

One such approach under consideration would require contractors to make additional representations about whether they analyze their business's climate-related risks, and also whether they publicly disclose this information. The FAR Council further notes that publicly traded companies are already required to disclose to the Securities and Exchange Commission (SEC) material risks, which would include risks from climate change. The proposed rule contains an example of the type of representation offerors would be required to make in this regard.

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Increased Scrutiny Over GSA Schedule Holders' Compliance with the Trade Agreements Act

By Kevin J. Maynard, Tara L. Ward, and Cara L. Lasley

In early May 2016, the U.S. General Services Administration (GSA) issued notices to thousands of Federal Supply Schedule (FSS) contract holders that it was increasing scrutiny of schedule holders' compliance with the Trade Agreements Act (TAA). These notices, which have been widely reported in the trade press, require contractors holding certain FSS Contracts to verify the country of origin for products on their GSA schedule(s), and to remove any non-compliant products from their schedule(s). According to GSA, these notices were driven in part by increased scrutiny from Congress as a result of reported violations of the TAA. Although the notices were reportedly targeted at certain FSS Contracts, these notices nevertheless serve as an important reminder for all FSS Contract holders, as well as any other government contractors subject to the TAA, regarding the importance of this issue. Indeed, a number of recent False Claims Act cases involving the TAA further illustrate the risks and severe consequences for contractors that fail to comply with these requirements. Thus, all Schedule holders and other government contractors subject to the TAA should take this opportunity to ensure that they have the appropriate controls in place to make sure that the products and services being sold to the Government are TAA compliant.

The TAA applies to agency procurements of goods and services over certain monetary thresholds. Separate dollar thresholds apply for contracts for construction materials, and, for procurements by the Department of Defense (DOD), the TAA does not apply to acquisitions of "arms, ammunition, or war materials, or purchases indispensable for national security or for national defense purposes." Importantly, GSA has taken the position that because the estimated dollar value of each Schedule exceeds the established TAA threshold, the TAA is applicable to *all* Schedules, so that *all* products and services offered through the Schedules program must comply with TAA.

Where the TAA applies, the Act and the implementing regulations prohibit agencies from acquiring products or services that are not from the United States or a "designated country" that has entered into a free trade agreement with the United States. While the list of "designated countries" includes a broad array of countries that are parties to various free trade agreements—including the World Trade Organization (WTO) Government Procurement Agreement (GPA), as well as certain bilateral trade agreements between the United States and individual countries—there are a number of countries (including China and India, as two notable examples) that are not "designated countries" for purposes of the TAA.

A product is TAA compliant if it was made or "substantially transformed" into a "new and different article of commerce" in the United States or a "designated country." (Services are considered TAA compliant if the company performing the services is "established" in the United States or a "designated country," which GAO has interpreted to mean "legally established.") Unfortunately for contractors trying to comply with the TAA, the "substantial transformation" test is not

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simple or straightforward. According to the FAR as well as case law from the Court of International Trade and rulings from Customs, substantial transformation is the creation of a "new and different article of commerce with a name, character, or use distinct from the original article." FAR 25.001(c)(2). Whether something has been "substantially transformed" is ultimately a fact-specific question that turns on a number of factors, including the extent and nature of post-assembly inspection procedures; worker skill required during the manufacturing process; and resources expended on product design and development. For example, these forums have found substantial transformation where:

- The function of the finished article is different from the functions of the article's component parts;
- The component parts of the article could not be disassembled without destroying the final or finished article;
- Production of the finished product involved complex assembly operations;
- Production involved programming and downloading of software that changed or defined the product's use; and
- Production involved a shift from producers' goods to consumers' goods—*i.e.*, transformation from products that would not generally be retailed to consumers to products that would be.

Contractors should be aware, however, that substantial transformation requires more than simple assembly in the United States or a designated country. For example, substantial transformation has ***not*** been found where components have the same use after assembly or the attachment of another component. In reviewing whether schedule goods are TAA compliant, then, there are several steps contractors should take, and factors to consider:

1. First things first, read the contract! Because TAA obligations and country of origin standards vary depending on specific clauses included in the solicitation or contract, and because there are severe penalties for noncompliance and improper certifications, it is important to know which clauses apply.
2. Contractors should perform the necessary due diligence and analysis before completing certifications—including analyzing the origin of the components that comprise an end product, as well as the location and nature of the manufacturing/assembly operations. Although not required, contractors also have the option to seek a country of origin determination from Customs, which has authority to issue country of origin rulings specifically for purposes of government procurement.
3. Obtain appropriate certifications from the original manufacturer. This is particularly important for resellers and other contractors that do not actually manufacture the end products being delivered to the Government.
4. Contractors should have practices and policies in place to ensure that only TAA compliant products are sold to the Government in contracts subject to the TAA, including, for example, separate pricelists or product numbers for TAA compliant products (particularly where contractors source products from TAA compliant and non-TAA compliant sources).

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Increased Scrutiny Over GSA Schedule Holders' Compliance with the Trade Agreements Act

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5. Maintain adequate documentation (*e.g.*, supplier certifications, bills of materials, and manufacturing documentation) to support any country of origin determinations.

For more information on any of these issues, or for guidance in responding to a GSA notice, or request for country of origin verification from other contracting agencies, please contact one of the attorneys listed below: ■

Kevin J. Maynard
202.719.7357
kmaynard@wileyrein.com

Tara L. Ward
202.719.7527
tward@wileyrein.com

Cara L. Lasley
202.719.7527
clasley@wileyrein.com

Competition and Climate Change: How the FAR Proposed Rule on Contractor Greenhouse Gas Disclosures Seeks to Influence Both

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Under the example, offerors would have to indicate whether they assess the risks that various "effects of climate change," such as "extreme weather" and other "physical impacts" have on their businesses. For contractors that are already required to file similar disclosures with the SEC, they would be required to represent whether their SEC filings discuss climate-related risks. Although this additional requirement is not part of the currently-proposed rule, the FAR Council is nonetheless seeking comment on it, suggesting that it may only be a matter of time before it is actually proposed.

This FAR proposed rule has the potential to affect thousands of large and small federal contractors by requiring them to represent to the Government whether they are publicly disclosing data related to their greenhouse gas emissions. The Administration clearly intends to use the rule as a mechanism to shape and influence federal procurements and advance climate change policy. As such, the disclosures that contractors would be required to make pursuant to the rule could impact future procurement outcomes where GHG emissions are factored into agency award decisions. The rule may also serve as a springboard for additional climate-related reporting requirements.

The FAR Council is accepting comments on the proposed rule through July 25, 2016. ■

For more information, please contact:

Kara M. Sacilotto
202.719.7107
ksacilotto@wileyrein.com

Kendra P. Norwood
202.719.7069
knorwood@wileyrein.com

When Submitting a Proposal, Late Is Late. Even Early Submissions Can Be Late If the Proposal Gets "Spammed," Except Perhaps at the Court of Federal Claims.

By Philip J. Davis and Nina Rustgi

In a recent case, *Federal Acquisition Services Team, LLC v. United States*, the Court of Federal Claims (COFC) ruled in a pre-award bid protest that where a contractor's timely proposal gets caught in the receiving agency's security server and does not reach the intended recipient's email inbox, it is unreasonable for the agency to consider the proposal untimely. This case is particularly interesting because, as we have written about previously, on similar facts, the Government Accountability Office (GAO) adopted a strict interpretation of the "late is late" rule and found that a contractor's proposal was untimely submitted when it was blocked by the agency's email security system from reaching its intended recipient. Indeed, the GAO had reached the same result here when the plaintiff initially brought its protest to GAO.

In *Federal Acquisition Services Team*, the offeror, FAST, was submitting a proposal in response to a U.S. Special Operations Command (SOCOM) solicitation for acquisition, procurement, and financial management support services. According to the solicitation, offerors were to submit their proposals by email to a particular email address at a particular time. The solicitation advised offerors that the maximum size of any files should be 20 MB. FAST had emailed its less-than-18 MB proposal to the specified email address about 4.5 hours early. The email was first received by the Defense Information Systems Agency's (DISA) server, which screens SOCOM's emails for security purposes and which then attempted to forward the email to the SOCOM server for delivery to the designated email address in the solicitation. Delivery to SOCOM's server failed, and the DISA server generated a notification to FAST that the size limit was exceeded, apparently because the agency's system increases the size of emails upon receipt. FAST missed the opportunity to re-submit its proposal by the deadline, and the agency refused to accept the plaintiff's proposal. After an unsuccessful protest at the GAO, FAST filed suit at the COFC.

In granting FAST's motion for judgment on the administrative record, the COFC first rejected the agency's claim that the "Government control" exception to the FAR's "late is late" rule did not apply to these facts. Under the relevant portion of the Government Control exception, a late proposal may be considered if it is received before award is made, the contracting officer determines that accepting the late offer would not unduly delay acquisition, and there is acceptable evidence to establish that it was received at the government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers. FAR 52.215-1(c)(3)(ii)(A)(2). Here, there was evidence from the agency's computer records indicating that FAST's emailed proposal was received by the DISA server approximately 4.5 hours before the deadline. Furthermore, because of the stay triggered by the GAO protest, and the agency's voluntary stay to accommodate the COFC protest, an award had not yet been made, nor would the procurement be unduly delayed. Lastly, the COFC ruled that receipt by the DISA server was sufficient to qualify as receipt "at the government installation designated for receipt of offers" and establish that the proposal was under the Government's control prior to the time set for receipt of offers, as it was the server

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designated within the Government to receive emails directed to the address contained in the solicitation.

Second, the COFC concluded that the agency's arbitrary actions resulted in additional prejudice to FAST beyond the harm FAST suffered from the agency's refusal to consider the plaintiff's proposal. These arbitrary actions included the agency's decision to refuse to consider the plaintiff's proposal in light of the systemic failure on the part of the agency to accept emails totaling up to 20 MB as advertised. Typically, an agency's negligent loss of singular proposal information does not entitle the offeror to relief, but where the loss is the result of a "systemic" failure resulting in multiple or repetitive instances of lost proposals, the protest must be sustained. At the COFC, the record revealed that seven offerors' proposals were initially rejected by the DISA server, and only thirteen were received in full at the proper address by the deadline. Moreover, the agency had considered the proposal sent by one offeror even though there was no record of any email sent by that offeror to the email address designated in the solicitation. Notably, not all of these facts were revealed to the GAO and only became apparent at the COFC as a result of the parties' supplementation of the record and a deposition of the contracting officer by written questions. The COFC even commented that the GAO decision was decided on "less than a full record."

There are two key takeaways from this case that disappointed offerors may want to consider should they find themselves in a similar situation in the future:

- The GAO apparently does not apply the Government control exception to electronic delivery methods, while the COFC does, as FAST's protests at GAO and the COFC demonstrate. In the contractor's initial protest at the GAO, the GAO eschewed any discussion of this exception. On the other hand, the COFC is friendlier to contractors whose emails have been caught by a security server by its application of the Government control exception to electronic transmissions.
- The opportunity for an expanded record at the COFC can be a boon to contractors attempting to prove a systemic failure. At the GAO, when the contractor sought documents from DISA regarding emails accepted or rejected by the DISA server in connection with the solicitation, the information was only "produced in fits and starts, and never completely."

Given the protest tribunals' differing receptivity to the Government control exception and expanded records, and the outcome-determinative nature such legal and evidentiary matters may have, as evidenced by the tribunals' diametrically opposed results here, it is important to consult with outside counsel to choose the forum that is most appropriate to the circumstances, especially when dealing with an allegedly "late" proposal submitted electronically. ■

For more information, please contact:

Philip J. Davis
202.719.7044
pdavis@wileyrein.com

Nina Rustgi
202.719.3761
nrustgi@wileyrein.com

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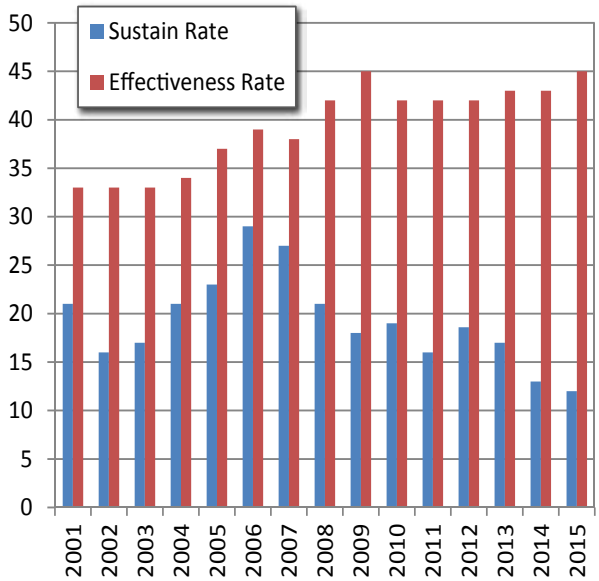
Bid Protest Effective Rate Shows Protests Are an Increasingly Important Check on the Integrity of the Procurement Process

In recent years, the SASC targeted the GAO bid protest process based on its perception that protests inject unwarranted cost and schedule delays into DOD's acquisition process. This echoes the drumbeat from the 2009 NDAA, in which Congress directed GAO to undertake a five-year review of protests involving the DOD. That report (B-401197, April 9, 2009) noted the inherent "balancing act" between ensuring that procurements can proceed without undue disruption, while also providing a mechanism for transparency and accountability. At the time, GAO highlighted that it consistently closed more than half of all DOD-related protests within 30 days, and 100% of all protests (per its statutory mandate) in less than 100 days. It noted that GAO received less than two protests each year per $1 billion in DOD spending, and the five-year trend was downward.

More recent statistics continue to belie the Committee's and DOD's anecdotal concern that bid protests inject unwarranted disruption. GAO still resolves protests involving DOD quickly—our analysis shows that GAO has disposed of more than 50% of DOD protests filed since 2014 within 30 days or less, just as it did in 2003-2008. GAO's bid protest statistics show that in 2015 (the most recent full year for which GAO reported data to Congress), GAO issued decisions sustaining a protest in only 12% of the protests in which it issued a formal decision on the merits, its lowest rate in more than 15 years. But the more relevant statistic for any discussion of the institutional benefits of the protest process lies in GAO's "Effectiveness Rate," which measures the frequency with which a protester obtains some form of relief after filing a protest and accounts for protests in which an agency takes voluntary corrective action before GAO issues a formal decision.

In 2015, GAO's "Effectiveness Rate" was 45%—the highest rate since GAO began reporting effectiveness in 2001. That means that in nearly half of all protests, a protester achieved some form of relief from GAO or the agency. In fact, while the pace of protests has steadily increased in the last 15 years, the "Effectiveness Rate" has also steadily increased:



Percentage of protests resulting in some form of relief to protester, including voluntary corrective action ("Effectiveness Rate") versus percentage of published decisions sustaining a protest ("Sustain Rate"), 2001-2015

What does this mean? If anything, the GAO bid protest process is more important now than ever to maintaining the integrity, transparency and openness of the federal procurement process, as protesters rely on GAO protests more frequently, but also more successfully, to ensure that source selections result in the right outcome.

And DOD agencies are hardly immune to these trends. For example, our analysis of decisions and outcomes from 2015 shows that the Air Force has a sustain rate that is

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approximately 50% higher than GAO's average for all agencies, while the Army appears to have a materially higher-than-average rate of voluntary corrective action. So while the Committee is in a rush to curtail the GAO protest process, the data suggests that other efforts may be better suited to improving the overall integrity of the procurement process, such as strengthening the government's acquisition workforce, encouraging more productive exchanges with industry before and during competitions, and improving transparency in the post-award debriefing process (which, if we are going to rely on anecdotal inferences, may be the single most effective way to reduce the prevalence of speculative protests).

At the end of the day, if DOD is concerned about potential program delays or increased costs that an unsuccessful GAO protest could cause, it already has two powerful tools to manage or eliminate those risks. First, DOD controls its acquisition timeline. The GAO protest process (and the attendant "automatic stay" of contract award/performance) is, at most, 100 days for an unsuccessful protest. DOD can eliminate any programmatic delays from non-meritorious protests simply by managing its acquisition cycle to include sufficient time to account for this process. Likewise, if an agency effectively manages its acquisition pipeline instead of waiting until the last minute before an incumbent contract expires to award the follow-on, it can mitigate or eliminate any financial opportunity an incumbent might be able to create by pursuing a protest to force a bridge contract or extension. Second, in cases where there are urgent or compelling circumstances, or it is in the government's best interest, DOD has the authority under the Competition in Contracting Act to "override" the automatic stay and move on with contract performance. With these tools at hand, the argument in favor of the SASC's proposed "reforms" further erodes.

The Proposed Reform Penalties Are Rife With Flaws

The last time GAO weighed in on potential bid protest reforms that featured "penalties" like the ones proposed by the Committee, it expressed significant concern that imposing penalties (including fines and cost-shifting provisions) to disincentivize protests could have serious negative consequences for contractors, GAO, and the procurement process. GAO's report in 2009 highlighted the collateral benefits of a robust and uncompromised bid protest process that could be adversely affected by systematic penalties, including (i) the significant public benefits of a forum "to identify and pursue complaints concerning the procurement system"; (ii) the opportunity for indirect congressional oversight of the procurement process; and (iii) the element of transparency and accountability infused into the procurement system, including the opportunity to provide acquisition-related guidance to agencies in the form of publically available decisions that interpret procurement laws and regulations. All of those public policy concerns continue to weigh against the Committee's proposed penalties.

The industry has already experienced the public policy growing pains that attend Congressional efforts to "streamline" the bid protest process or insulate procurements from review. After the Federal Acquisition Streamlining Act of 1994 (FASA) restricted task and delivery order protests, Congress grew wary of unintended consequences when agencies became too dependent on multiple award IDIQ contracts as a means to evade competition. In 2007, the Acquisition Advisory Panel chartered under the Services Acquisition Reform Act of 2003 (SARA) highlighted bid protest opportunities as an important check that favored competition and transparency, but that was lacking at the IDIQ order

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level and needed to be reinstated. A follow-up GAO report confirmed the competition shortfalls, noting that nearly half of all DOD IDIQ order awards it reviewed in one study were awarded without competition. *Oversight Plan Needed to Help Implement Acquisition Advisory Panel Recommendations*, GAO-08-160 (Dec. 2007). The FASA bid protest "reform" proved ill-fated, and by 2008 Congress was forced to pivot back.

Setting aside the policy debate about whether there is any need for bid protest "reform," the SASC's proposed statutory changes have shortcomings that would make them virtually impossible to implement. For example, neither proposed reform addresses the situation where there are multiple protesters, including what happens where GAO sustains protest arguments raised by one protester but not others. Likewise, the proposal to impound certain payments to an "incumbent" contractor for a bridge contract does not address the potential outcome where an agency takes voluntary corrective action in response to the incumbent's protest—which as noted above happens with increasing frequency. And from a practical perspective, how would an agency be able to ever prospectively identify "all payments above incurred costs of a protesting incumbent contractor" so that it could be in a position to withhold them? As it stands now, actual "incurred" costs on any cost-reimbursable contract (including indirect cost allocations) may not be finalized for several years, as DCAA is routinely several years in arrears on any incurred cost audits. Fixed price contracts, on the other hand, do not require contractors to capture "incurred costs" at all, while paying something less than the negotiated "price" would be tantamount to a breach of contract. Regardless of contract type, the proposal to use Robin Hood tactics to take "profits" earned by one company but deliver them to the government or another contractor would be rife with due process and Fifth Amendment takings legality problems.

These concerns underscore the need for a more informed dialogue about the actual programmatic risks that DOD realistically faces in connection with the GAO bid protest process, and what options exist to meaningfully address any real risks, as opposed to perceived ones borne from anecdotal experiences that are not representative of systematic problems. The House and Senate's proposed in-depth report on the impact of GAO and Court of Federal Claims bid protests is a constructive step in that direction. Perhaps better data will pave the way for analysis and constructive dialogue about what, if any, bid protest reforms are necessary to improve the integrity of DOD's acquisition process. It might save us from fixing a problem that Congress may determine never existed. ■

For more information, please contact:

Jon W. Burd
202.719.7172
jburd@wileyrein.com

SPEECHES & PUBLICATIONS

Understanding and Managing Workplace Risk Under the Fair Labor Standards Act (FLSA)
Jillian Laughna, Panelist
Equal Employment Advisory Council's 2016 Annual Meeting and Policy Conference
March 18, 2016 | Washington, DC

ABA Bid Protest Remedies Meeting
Kara M. Sacilotto, Panelist
April 19, 2016 | Washington, DC

When Small Business Looms Large
John R. Prairie, Panelist
Federal Circuit Bar Association Government Contracting Summit 2016
April 27, 2016 | Washington, DC

Regulators' Roundtable: The Latest in Government Enforcement
Ralph J. Caccia, Panelist
ABA's Seventh National Institute on Internal Corporate Investigations and Forum for In-House Counsel
April 28, 2016 | Washington, DC

Government Update
Nicole J. Owren-Wiest, Speaker
BDO's 3rd Annual Executive Seminar for Government Contractors
April 28, 2016 | McLean, VA

DHG's 21st Annual Government Contracting Update - Navigating the Issues: A Roadmap to Success
Nicole J. Owren-Wiest, Speaker
GovCon Industry Update
May 5, 2016 | Tysons, VA

Significant Regulatory and Legislative Developments in Government Contracting, 2015-2016
Kara M. Sacilotto, Tracye Winfrey Howard, Craig Smith, Speakers
Federal Circuit Bar Association Bench and Bar Webcast
May 9, 2016 | Online Webinar

Anti-Kickback and Stark Law Developments
Ralph J. Caccia, Speaker
ABA's 26th Annual National Institute on Health Care Fraud
May 13, 2016 | Indian Wells, CA

Prescription Drug Procurements and Contracting
Rachel A. Alexander, Dorthula H. Powell-Woodson, Speakers
Blue Cross Blue Shield Association 2016 National Summit
May 16, 2016 I Orlando, FL

Administration of Government Contracts
John R. Prairie, Speaker
Federal Publications Seminars
May 16-17, 2016 | Minneapolis, MN

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Basics of Government Contracting
Eric W. Leonard, Gary S. Ward, Speakers
Federal Publications Seminars
MAY 16-18, 2016

2016 Effective Prosecution of Financial Crimes; Human Trafficking & Cybercrime
Ralph J. Caccia, Speaker
International Law Institute
JUNE 6, 2016 | WASHINGTON, DC

Government Contractors and Litigation Forums: Rocky Seas Ahead - Navigating Litigation Against the Government And Avoiding the Icebergs
Paul F. Khoury, Kara M. Sacilotto, Speakers
Association of Corporate Counsel National Capital Region
JUNE 8, 2016

The Government Contract Intellectual Property Workshop
Nicole J. Owren-Wiest, Scott A. Felder, Speakers
Federal Publications Seminars
JUNE 13-15, 2016 | DENVER, CO

Cybersecurity
Jon W. Burd, Speaker
Forum on Government Procurement Law
JUNE 16, 2016 I CHARLOTTESVILLE, VA

Key Risk Areas in Federal Grants
John R. Prairie and Brian Walsh, Speakers
Columbia Books and Information Services
JUNE 21, 2016 | ONLINE WEBINAR

Conflicts and Other Pitfalls
Jon W. Burd, Speaker
Federal Circuit Bar Association's 2016 Bench & Bar Conference
JUNE 25, 2016 | NASHVILLE, TN

Teaming Agreements
John R. Prairie, Speaker
InsideNGO, 2016 Annual Conference
JULY 12, 2016 | WASHINGTON, DC

Navigating Change in Small Business Contracting
John R. Prairie, Speaker
National Contract Management Association, World Congress 2016
JULY 26, 2016 | ORLANDO, FL

Anatomy of a Mega Protest
Scott M. McCaleb, Speaker
American Bar Association Section of Public Contract Law Annual Meeting
AUGUST 4, 2016 | SAN FRANCISCO, CA

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You're on the Hook: Mitigating Compliance Risks in an Era of Proactive Subcontractor Management
Eric W. Leonard, Speaker
Lawline
October 19, 2016

The Government Contract Intellectual Property Workshop
Nicole J. Owren-Wiest, Scott A. Felder, Speakers
Federal Publications Seminars
November 14-16, 2016 | San Diego, CA

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
Todd A. Bromberg	202.717.7357	tbromberg@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
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
P. Nicholas Peterson	202.719.7466	ppeterson@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
Mark B. Sweet	202.719.4649	msweet@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

ASSOCIATES

Moshe B. Broder*	202.219.7394	mbroder@wileyrein.com
Jillian D. Laughna	202.719.7527	jlaughna@wileyrein.com
Cara L. Lasley*	202.719.7394	clasley@wileyrein.com
Samantha S. Lee	202.719.7551	sslee@wileyrein.com
Margaret E. Matavich	202.719.7356	mmatavich@wileyrein.com
Kendra P. Norwood	202.719.7069	knorwood@wileyrein.com
George E. Petel	202.719.3759	gpetel@wileyrein.com
P. Nicholas Peterson	202.719.7466	ppeterson@wileyrein.com
Nina Rustgi	202.719.3761	nrustgi@wileyrein.com
Craig Smith	202.719.7297	csmith@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

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