

THE NEWSLETTER FROM THE BDO GOVERNMENT CONTRACTING PRACTICE

# BDO KNOWS: GOVERNMENT CONTRACTING



## EMERGING CYBER OPPORTUNITIES IN GOVERNMENT CONTRACTING

By Bob Craig & Shahryar Shaghghi

**Amid the aftermath of troubling cybersecurity breaches at various government agencies—including the Office of Personnel Management—the U.S. government and Congress have pushed for a major increase in government focus and spending on cyber protection.**

To assess and strengthen federal networks and systems, the White House Office of Management and Budget (OMB) launched the Cybersecurity Strategy Implementation Plan (CSIP) in October 2015.

### THE CSIP FOCUSES ON FIVE KEY AREAS:

- ▶ Identifying and protecting high-value assets and information

- ▶ Detecting and responding to incidents quickly
- ▶ Recovering from incidents and implementing lessons learned
- ▶ Building a robust cybersecurity workforce
- ▶ Efficiently and effectively acquiring and deploying existing and emerging technologies.<sup>1</sup>

The influx of government focus and spending on cybersecurity generates immense opportunity for commercial information technology companies to increase their revenue by contracting with the government or working with existing prime contractors to provide cyber services.

Most notably, the Department of Homeland Security's (DHS) \$1 billion award to Raytheon at the end of last year marks one of the largest civilian cybersecurity orders in recent history. The contract, which

### DID YOU KNOW...

One in four tech CFOs view cybersecurity concerns as the primary driver of industry growth this year, according to [BDO's 2016 Technology Outlook Survey](#).

According to an [ID Agent report](#), the federal government spends more than \$179 billion in advertising and marketing, engineering, environmental, financial and accounting, IT, logistics and management consulting.

Washington Technology's [Contractor Confidence Index](#) rose to 101.9 in Q4 of 2015, up from 97.3 in the previous quarter, indicating more market certainty among contractors.

[Gartner estimates](#) suggest that there will be nearly 21 billion Internet of Things-enabled devices by 2020, up 20 percent from 2015.

According to a [new survey](#) by the Government Business Council and Dell, 28 percent of federal employees had a positive opinion of the Federal IT Acquisition Reform Act (FITARA), while 8 percent had a negative opinion.

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## CYBER OPPORTUNITIES

will reportedly run for five to seven years, includes the development and support of cybersecurity protections for the DHS and its umbrella agencies.

### FEELING THE PRESSURE

Increasingly prevalent cyber threats are squeezing private businesses and federal entities alike. Last year, the government revealed that hackers stole sensitive information from upwards of 21 million people—including every person given a government background check during the past 15 years—through a massive breach of government computer systems. A separate breach earlier in the year compromised the personal records of 4.2 million federal employees. Both attacks are believed to have originated from China.

The government must defend its information systems against a growing number of both individual and state-sponsored threats. Simultaneously, businesses working with the government must contend with increasingly tight standards around protecting and securing not only their own data and information systems but also those of their government customers in order to comply with newly imposed federal regulations.

As the government increases scrutiny and tightens regulations, its own data infrastructure is growing. The recently passed Cybersecurity Information Sharing Act (CISA),

a historic bill designed to foster collaboration and sharing of cyber threat information between private industry, government and law enforcement, has implications for technology companies as well as federal entities. While the bill intends for a two-way flow of information, it has garnered attention for potential privacy risks to personal data if the government collects information on a cyber attack. The federal government faces a heightened need to protect not only its own data against attack, but also companies' data and, potentially, consumers' data, which might be collected as a result of this and other cyber-related legislation.<sup>2</sup> The recent data encryption debate between Apple and the FBI illustrates the potential sensitivities that may arise.

### OPENING DOORS FOR CYBER-RELATED CONTRACTING

There are a number of pathways that may allow companies to take advantage of the pipeline of emerging opportunities and participate as prime or subcontractors in targeted efforts to upgrade systems and protect various agencies' information infrastructure. In his fiscal 2017 budget proposal to Congress, President Obama included a \$19 billion cybersecurity request—which, if passed, would constitute a 35 percent increase in cyber spending over this year. The initiative calls for \$3.1 billion for

technology modernization at various federal agencies and \$62 million to expand efforts to retain qualified cyber professionals.

As part of the proposed budget for fiscal year 2017, President Obama has allocated \$14 billion in cybersecurity funding around a number of priorities, including securing federal networks with the Continuous Diagnostics & Mitigation (CDM) program, promoting research and development to expand agencies' cybersecurity capabilities, and supporting long-term investment in cybersecurity.<sup>3</sup> Furthermore, the White House has asked Congress to take further legislative action to protect agencies' cybersecurity with the 2015 Cybersecurity Legislation Proposal.

From a defense perspective, the National Defense Acquisition Act (NDAA) for fiscal year 2016, signed into law last November, could also revolutionize cyber acquisition and expand opportunity for contractors by allowing U.S. Cyber Command the authority to acquire cyber tools it deems necessary to its mission. The NDAA also specifies that, in the event of a cyber attack, the Defense Secretary can appoint an official charged with awarding contracts to acquire supplies and services to mitigate an attack's effects, ideally within 15 days.<sup>4</sup> Additionally, cleared defense contractors and "operationally critical" contractors have been provided with cybersecurity liability protections, provided the contractor is in compliance with the DOD's cyber requirements.

### MAINTAINING COMPLIANCE

Commercial companies looking to enter the government contracting space must be prepared to protect highly sensitive information and implement the necessary security controls to satisfy the government's strict requirements. On Dec. 30, 2015, the Department of Defense (DOD) gave contractors an extension on implementing the new rules for network penetrating reporting and contracting for cloud services until Dec. 31, 2017. While DOD has granted additional time for contractors to assess their information systems and address any security gaps, it is critical to identify those gaps now to avoid a breach of contract or false implied certification determination.



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In addition, the recently passed 2016 NDAA contains several cybersecurity provisions that have compliance implications. The aforementioned liability protections do not extend to contractors who engage in "willful misconduct," which includes "disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit." The NDAA also requires defense contractors to report network penetrations within 72 hours.

What do these new rules mean for government contractors? To take advantage of the opportunity to contract with the government to strengthen its systems and bolster its cybersecurity protections, commercial companies must, at a bare minimum, comply with the government's prescriptive recommendations for cybersecurity, and employ best practices to keep sensitive data out of the wrong hands. To do so, contractors should:

- ▶ **Implement early detection protocols:** A variety of systems and technologies, including artificial intelligence, machine learning and probabilistic mathematics, enable the rapid identification of malware and intrusions that have gained access to IT systems. Contractors can contain these infiltrators by identifying them early on and preventing them from accessing what they want to access.
- ▶ **Identify your sensitive data:** A breach of government data could not only compromise personal identification records, but jeopardize national security. When evaluating cyber risk, contractors need to be able to assess where there are vulnerabilities in the network as well as the security consequences of exposing the data.
- ▶ **Establish and maintain a strong system of internal controls.** Companies should implement policies explicitly outlining access levels for sensitive information and establish procedures for ongoing training, monitoring and documentation. Proactively managing and promoting internal controls helps employees stay up to date on the latest threats, which can help lower a company's vulnerability.

- ▶ **Develop a clear and comprehensive threat response plan.** Of course, it is best for companies to take a proactive approach to dealing with cyber threats rather than waiting until a crisis emerges. This includes putting together a response team composed of legal, compliance and IT personnel to handle threats as they arise and establish protocols for detecting, isolating and eradicating threats. This response plan should also outline protocol for recovering from the breach—bringing IT systems back online, patching vulnerabilities, etc.—and identifying lessons learned to help improve policies and procedures for the future.

Organizations can be certain that cybersecurity will remain a top priority for both private industry and the federal government. Businesses in the cyber realm are operating in a rapidly shifting landscape characterized by both challenges and opportunities. Preventing and addressing cyber threats is a moving goalpost for both businesses and government agencies. The right mix of proactive risk reduction and testing combined with maintenance of internal controls can go a long way for businesses looking to tap into the full pipeline of cyber-related contracting opportunity.

1 <https://www.washingtonpost.com/news/the-switch/wp/2015/09/29/raetheon-wins-1-billion-cybersecurity-contract-to-battle-attacks-on-u-s-agencies/>

2 <http://www.nbcnews.com/tech/tech-news/senate-passes-cybersecurity-bill-despite-privacy-concerns-n452101>

3 <https://www.whitehouse.gov/omb/overview>

4 <http://www.defensenews.com/story/defense-news/2015/10/22/obama-poised-veto-2016-ndaa/74386314/>



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## YOU'RE INVITED:

### BDO'S THIRD ANNUAL EXECUTIVE SEMINAR FOR GOVERNMENT CONTRACTORS

#### Learn More About Business System Challenges

**April 28, 2016**  
**8:30 a.m. to 4:30 p.m.**  
**The Ritz-Carlton**  
**Tysons Corner in McLean, Va.**

BDO will be co-hosting with Federal Publications Seminars and Wiley Rein its third annual daylong executive seminar for government contractors to discuss key issues and regulatory considerations for the industry. The event is also sponsored by The McLean Group and Deltek.

Attendees will have the opportunity to hear from government officials such as **Rodney Grandon**, Deputy General Counsel for the U.S. Air Force and **Ken Saccoccia**, Deputy Director, DCAA, as well as other leading industry executives from companies such as Honeywell, Pratt & Whitney, ManTech and Rolls Royce, about a range of issues facing contractors, including the current DCAA/DCMA environment, compliance matters, the impact of business system requirements in today's marketplace and the latest legal updates influencing the sector. The seminar will also explore recent DCAA audit guidance and best practices for compliance management.

To learn more and register for the event, click [here](#).

# GOVERNMENT CONTRACTORS: HOW THE PATH ACT IMPACTS YOU

By Jeff Schragg and Sarah Masoom

## On Dec. 23, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 (PATH Act).

As expected, the legislation extends many expired provisions. To the surprise of many, however, a number of previously expired tax benefits to individuals and businesses were made permanent. In addition, the Act makes substantive modifications within the extenders package, with an effective date of Jan. 1, 2016, rather than reaching back to Jan. 1, 2015.

Many of these changes will have a direct impact on the tax liability of government contractors, including:

### RESEARCH AND DEVELOPMENT (R&D) TAX CREDIT (IRC § 41) ALLOWED AGAINST AMT

The R&D credit has been permanently extended and may now reduce Alternative Minimum Tax (AMT) liability for government contractors. The research credit has been added to the list of general business credit components designated as "special" credits that may offset AMT, as well as regular tax. An allowance of the R&D credit against AMT liability applies to credits determined for tax years beginning after Dec. 31, 2015.

### PAYROLL TAX CREDIT FOR R&D

A taxpayer that is a qualified small business may now elect to apply a portion of its credit against the 6.2 percent payroll tax imposed on the employer's wage payments. The credit is limited to:

- ▶ \$250,000;
- ▶ The lesser amount of the research credit for the tax year; or
- ▶ The amount of the business credit for the tax year, including the research credit that may be carried forward to the tax year immediately after the election year.

A partnership or corporation (including an S corporation) qualifies as a small business during a given tax year if its gross receipts are less than \$5 million, and the partnership or corporation did not have gross receipts prior to 2012.

### FIXED ASSET-RELATED EXTENDERS

#### Internal Revenue Code (IRC) Section 179 Expensing

Taxpayers may elect to use an expense deduction for a specified amount of depreciable personal property for the first year the property is placed in service of a trade or business in lieu of depreciation. The PATH Act permanently extends this enhanced expensing. Consequently, businesses may expense up to \$500,000 in qualifying property placed in service in a given tax year. It is also worth noting that the expensing may not reduce taxable income below zero. In addition, the deduction starts phasing out proportionately to the extent that the overall cost of the property placed in service during the tax year exceeds \$2 million. The PATH Act provides that the dollar amounts for expense deductions and depreciable personal property will be indexed for inflation after 2015 levels.

#### Qualified Leasehold Improvements Depreciation (IRC § 168(e)(3)(E))

Qualified leasehold improvements can be depreciated over 15 years for tax purposes. Prior to this extension, these improvements would have been depreciated over a period of 39 years for tax purposes. This extension is permanent under the PATH Act.

#### Bonus Depreciation (IRC Section 168(k))

A special first-year depreciation allowance, known as bonus depreciation, may be claimed for new property placed in service during the tax year. The allowance is currently 50 percent of the cost of the property placed in service. This allowance applies to certain types of property with a recovery period of 20 years or less and includes computer software, equipment, furniture and fixtures,

qualified leasehold improvement property and qualified improvement property. Effective for property placed in service after 2015, the bonus deduction for qualified leasehold improvement property is replaced with a bonus deduction for "qualified improvement property" made to the interior portion of a nonresidential building, whether or not the building is subject to a lease. The PATH Act extends bonus depreciation to apply to property placed in service before 2020. The bonus rate is reduced from 50 percent to 40 percent for property placed in service in 2018, and to 30 percent for property placed in service in 2019.

### REDUCTION IN S CORP RECOGNITION PERIOD FOR BUILT-IN GAINS TAX (IRC §1374)

A corporate-level tax is imposed on any gain realized by a corporation that arose prior to the S corporation election. The gain is recognized by the S corporation through sale or distribution within any tax year during the recognition period. Prior to the signing of the PATH Act, it seemed as though this recognition period would revert back to 10 years from the first day of the first tax year for which the entity was an S corporation. However, under the PATH Act, the recognition period has been reduced to a five-year period, beginning with the first day of the first tax year for which the corporation was an S corporation. This is a permanent extension under the PATH Act.

### TAX CREDITS FOR EMPLOYERS

#### Work Opportunity Tax Credit (WOTC) (IRC § 51)

The Work Opportunity Tax Credit (WOTC) is a federal tax credit that provides incentives to employers for hiring employees who belong to certain targeted groups facing high rates of unemployment. The WOTC is based on the number of hours an employee works during the current taxable year. This tax credit has been extended under the PATH Act through 2019.

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## PATH ACT

### Employer Wage Credit for Employees Who Are Active Duty Members of the Uniformed Services (IRC §45P)

When members of the National Guard or Reserves are called up to active military duty, their civilian jobs and salaries are placed on hiatus, and they begin receiving military pay. If a service member's civilian salary is higher than the individual's military pay, the civilian employer can voluntarily provide military differential pay in an amount equal to the difference between the employee's civilian and military pay. In return, an eligible employer can claim a tax credit for up to 20 percent of the military differential wage payments it makes to qualified workers during the tax year. This is a permanent extension under the PATH Act.

The PATH Act brings many beneficial provisions to federal government contractors, but also rips off a few economic bandages that had served as stimuli during the aftermath of the recession. With that in mind, many of these tax provisions could serve as a bellwether of the nation's stronger economic footing, which should benefit government contractors across the board.



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## PEerspective in GOVERNMENT CONTRACTING



**2015 saw robust dealmaking in the government contracting sector, and this dynamic is likely to continue through 2016, according to *Bloomberg Government*.**

An improved budgetary environment, including relief from sequestration spending limits, and continued focus on national security risks have led to improved revenue forecasts and valuations for defense contractors and other government services providers.

As providers evaluate their portfolios, many companies are refocusing on core capabilities, leading to strategic acquisitions and divestitures. CACI International recently completed a \$550 million acquisition of L-3 Communications' National Security Solutions business, expanding the firm's IT, security and intelligence capabilities, and positioning the combined firm to pursue large contract opportunities in federal IT contracting.

Others—such as Lockheed Martin, BAE and L-3—are divesting non-core assets as fierce competition and a strong downward pressure on contract prices from government agencies squeezes profit margins. The U.S. government's use of lowest-price technically acceptable (LPTA) procurement practices is proving especially challenging for middle-market contracting firms. Many are seeking buyers as they find themselves excluded from contracts set aside for small businesses and unable to compete with larger firms' aggressive pricing.

Private equity has been active in government contracting M&A over the past year, taking advantage of higher valuations to exit earlier investments and putting dry powder to work in strategic investments. These tended to be focused around emerging and innovative sectors like Big Data and cybersecurity, providing highly specialized support services in arenas such as healthcare and human resources.

Cybersecurity and cloud computing are growth areas and have been driving significant M&A activity. President Obama recently made federal IT modernization and cybersecurity urgent priorities, proposing significant IT spending increases across all areas of government in his budget for fiscal year 2017, which awaits approval from Congress. The Department of Defense alone is seeking \$37 billion for IT spending for the next fiscal year, with cybersecurity, cloud computing, infrastructure and unified capabilities at the top of the agenda, according to *Washington Technology*.

Venture capital investment in cybersecurity startups reached an all-time high of around \$3.5 billion last year, having grown roughly 40 percent year-on-year for the last five years, *TechCrunch* reports. Despite highly efficient capital consumption and good survival rates compared with other verticals, exit valuations tend to be low, and time-to-exit can be long. This can make it hard for cybersecurity startups to compete for funding against more sensational valuations in the broader technology sector, and may mean the cybersecurity market is underfunded, according to *TechCrunch*.

Such low valuations make them attractive targets for private equity, however, especially when it comes to bundling acquisitions with larger deals. Seeking add-on deals to make frothy valuations more palatable has been a clear trend in the PE world over the last few years. Add-ons represented 62 percent of PE buy-out activity in 2015—a record high—up almost 20 percent since 2006, according to PitchBook data. With industry consolidation set to continue this year, add-on deals may be a good way for PE investors to build scalable, competitive government contracting platforms, while bringing down the net multiples they pay for them.

*PEerspective in Government Contracting* is a recurring feature exploring the role of private equity in the government contracting industry.

Sources: *Bloomberg Government*, *Gov Con Wire*, *Washington Technology*, *NextGov*, *TechCrunch*, *PitchBook*

# FALL 2015 REGULATORY UPDATE

**This regulatory update contains the latest proposed and final rules from both the Federal Acquisition Regulations (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). It also includes other relevant updates, such as Executive Orders and guidance issued from both the Defense Contract Audit Agency (DCAA) and Defense Contract Management Agency (DCMA).**

## PROPOSED DFARS RULES

### Promoting Voluntary Post-Award Disclosure of Defective Pricing – [Case 2015-D030](#)

The proposed DFARS rule would direct Department of Defense (DOD) contract officers to request limited-scope audits when contractors voluntarily disclose defective pricing after contract award unless a full-scope audit is appropriate for the circumstances.

Contractors recommended several changes to 41 U.S.C chapter 35, Truthful Cost or Pricing Data, and to the related DFARS guidance. They specifically recommended that the DOD clarify policy guidance to reduce repeated submission of certified cost or pricing data. Pricing claims by the DOD after contract award influence contractors' frequent submissions of such data. Contractors can better defend against these defective pricing claims with data that is frequently updated, and hence less outdated or inaccurate.

The idea behind the proposed rule is that such small-scope audits requested from the contracting officer may encourage the contractors to reduce the number of such submissions.

### Duty Free Entry Threshold Revision – [Case 2015-D036](#)

DOD is proposing to revise DFARS 225.9, Customs and Duties, and the clause at DFARS 252.225-7013, Duty-Free Entry, by increasing the duty-free entry threshold.

The proposed DFARS rule would adjust the threshold for duty-free entry on foreign supplies that are not from qualifying countries or eligible foreign supplies (mentioned under DRAFS 225.9 and 252.225-7013) from \$200 to \$300. The current \$200 threshold was established in 2003.

### Multiyear Contract Requirements, DFARS Proposed Rule – [Case 2015-D009](#)

The proposed amendment would implement section 816 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 and section 8010 of the DOD Appropriation Act for FY 2015, both addressing various requirements for multiyear contracts.

**Section 816** clarifies that a multiyear contract may not be entered into for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear authority, unless the Secretary of Defense clarifies in writing that certain conditions have been met not later than 30 days before award of the contract.

**Section 8010** changes two things:

- ▶ Multiyear contracts cannot be terminated without 30-day prior notification to the congressional defense committees (adjusted from 10 days before termination)
- ▶ The head of the agency must ensure the following before entering into a multiyear contract:
  - Cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract;
  - The contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units; and
  - The contract does not provide for a price adjustment based on a failure to award a follow-on contract.

### Independent Research and Development Expenses, DFARS Advance Notice of Proposed Rulemaking – [Case 2016-D017](#)

DOD is seeking information that will assist in the development of a revision to the DFARS to ensure that substantial future independent research and development (IR&D) expenses as a means to reduce evaluated bid price are evaluated in a uniform way during competitive source selections. In addition to the request for written comments on this proposed rulemaking, DOD will hold a public meeting to hear the views of interested parties.

### Enhancing the Effectiveness of Independent Research and Development, DFARS Proposed Rule – [Case 2016-D002](#)

DOD is proposing to amend DFARS to improve the effectiveness of independent research and development investments by the defense industrial base that are reimbursed as allowable costs.

This proposal is in response to price advantage concerns. Giving contractors the assurance of future IR&D expenditures reduces development price proposals by using a separate source of government funding (allowable IR&D overhead expenses spread across the total business) to gain this price advantage in a specific competitive bid. This was not the intended purpose in making IR&D an allowable cost.

The proposed approach would then require detailed descriptions and values of IR&D projects, and proposal price evaluations would include the value of relevant IR&D projects.

## PROPOSED FAR RULES

### Prohibition on Reimbursement for Congressional Investigations and Inquiries, FAR Proposed Rule – [Case 2015-016](#)

DOD, the General Services Administration (GSA) and NASA are proposing to amend FAR to implement section 857 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for FY 2015. This section provides additional requirements relative to the allowability of costs incurred

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by a contractor in connection with a congressional investigation or inquiry.

While section 857 only applies to contracts with the DOD, NASA and the Coast Guard, for the purpose of promoting consistency in the accounting systems of federal contractors, it was decided to apply the section's requirements to all agencies subject to FAR.

## FINAL FAR RULES

### [Establishing a Minimum Wage for Contractors](#)

**Release:** 12/04/15

The DOD, GSA and NASA have adopted, as final, a rule establishing a minimum wage for contractors with covered contracts containing FAR clauses 52.222-6 or 52.222-41. Contractors must pay workers no less than the applicable Executive Order minimum wage for all hours worked in support of covered contracts. The original interim rule was published in the Federal Register at 79 FR 74544 on Dec. 15, 2014, to implement Executive Order 13658, Establishing a Minimum Wage for Contractors, and a final rule issued by DOL at 29 CFR part 10. A correction to the interim rule was published at 79 FR 75434 on Dec. 18, 2014, establishing the rule's effective date as Dec. 15, 2014.

### [Pilot Program for Enhancement of Contractor Employee Whistleblower Protections](#)

**Release:** 12/04/15

DOD, GSA and NASA have adopted as final, with changes, an interim rule amending FAR to implement a statutory pilot program enhancing whistleblower protections for contractor employees. The interim rule was published in the Federal Register at 78 FR 60169 on Sept. 30, 2013, to implement a four-year pilot program to enhance the existing whistleblower protections for contractor employees at FAR subpart 3.9. The pilot program is mandated by section 828, entitled "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections," of the National Defense Authorization Act (NDAA) for FY 2013 (Pub.

L. 112-239, enacted Jan. 2, 2013). Some important revisions include:

- a. Pilot authority applies to title 41 agencies and is inapplicable to DOD, NASA and the Coast Guard. The latter three agencies are covered by 10 U.S.C. 2409, which was amended by section 827 of the NDAA to impose permanent requirements very similar to the temporary requirements of the pilot program established in title 41.
- b. Section 4712 and its implementing regulations (1) protect contractor or subcontractor employees against reprisal for activities protected by FAR 3.908-3(a) and (2) do not change any right or remedy otherwise available to the employee.
- c. FAR 3.907, which addresses whistleblower protections under the American Recovery and Reinvestment Act of 2009, was unaffected by this rule.

### [Further Amendments to Equal Employment Opportunity](#)

**Release:** 12/04/15

The DOD, GSA and NASA have adopted, as final, an interim rule amending the FAR to prohibit discrimination in federal government procurement by adding sexual orientation and gender identity to the prohibited bases of discrimination established by E.O. 11246. The rule will apply to all contracts and subcontracts subject to the Equal Opportunity FAC clause 52.222-26. The interim rule was published in the Federal Register at 80 FR 19504 on April 10, 2015, to implement E.O. 13672, entitled, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," and a final rule issued by the Department of Labor at 41 CFR part 60.

### [Retention Periods](#)

**Release:** 12/04/15

DOD, GSA and NASA are issuing a final rule to update the government file retention periods identified at FAR 4.805, Government Contract Files, to conform with the retention periods in the revised NARA General Records Schedule (GRS) 1.1, Financial Management and Reporting Records notice, which was published in the Federal Register at 79 FR 54747 on Sept. 12, 2014. The retention

periods for government contract records at FAR section 4.805 is changed to conform to the revised NARA GRS 1.1 as follows:

- a. Language at paragraph (a) regarding agency procedures for contract file disposal is removed.
- b. Language at paragraph (b) regarding retention periods for acquisitions conducted prior to July 3, 1995 is removed.
- c. Language is added at a new paragraph (c) to require agencies to request approval from NARA though the agency's records officer if a shorter retention is needed.
- d. In the Table at 4-1:
  - The retention period identified for records related to Contract Disputes statute actions is removed; the requirement is covered by paragraphs numbered (1) and (8).
  - The retention period for all contracts and related records is changed to six years after final payment.
  - The retention period for unsolicited proposals not accepted by the agency is changed to be in accordance with agency procedures.

### [Updating Federal Contractor Reporting of Veterans' Employment](#)

**Release:** 12/04/15

DOD, GSA and NASA are issuing an interim rule amending the FAR to implement a final rule issued by the Veterans' Employment and Training Services (VETS) of the Department of Labor (DOL) that was published in the Federal Register at 79 FR 57463 on Sept. 25, 2014, which rescinded the regulations at 41 CFR part 61-250 and revised the regulations at 41 CFR part 61-300, which implemented the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA) and the Jobs for Veterans Act (JVA) (Pub. L. 107-288). VEVRAA requires federal contractors and subcontractors to annually report on the total number of their employees who belong to the categories of veterans protected under VEVRAA, as amended by the JVA, and the total number of those protected veterans who were hired during the period covered by the report. One of the main purposes of the DOL's rule was to revise the reporting requirement

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applicable to government and subcontracts over the simplified acquisition threshold by changing the manner in which federal contractors report on their employment of veterans. DOL's final rule changed the name of the annual report required under those regulations to the Federal Contractor Veterans' Employment Report VETS-4212. Additionally, the FAR rule incorporates the revisions to certain definitions, the text of the reporting requirements clause included in government contracts and subcontracts, and the methods of filing the annual report on veterans' employment covered by the new form. The VETS rule requires contractors and subcontractors to comply with its revised reporting requirements beginning with the annual report filed in 2015.

### [Definition of Multiple-Award Contract](#)

**Release:** 2/1/16

DOD, GSA and NASA published a proposed rule in the Federal Register at 80 FR 31342 on June 2, 2015, soliciting public comments regarding the definition of the term "multiple-award contract." The proposed rule was implementing the definition that the U.S. Small Business Administration (SBA) established at 13.CFR.125.1(k) in its final rule, which published in the Federal Register at 78 FR 61114 on Oct. 2, 2013. SBA's final rule implemented several provisions of the Small Business Jobs Act of 2010, Pub. L. 111-240. Section 1311 of Pub. L. 111-240 (15 U.S.C. 632(v)) added a definition of "multiple-award contract." One respondent submitted a comment on the proposed rule.

### [Trade Agreements Thresholds – Case 2016-001](#)

Approximately every two years, the trade agreements thresholds in place must be adjusted according to a pre-determined formula under the agreements. On Dec. 15, 2015, the United States Trade Representative specified the following new thresholds (in U.S. dollars) effective Jan. 1, 2016 in the Federal Register (80 FR 77694, Dec. 15, 2015):

TRADE AGREEMENT	EQUAL TO OR EXCEEDING		
	Supply Contract	Service Contract	Construction Contract
<b>WTO Government Procurement Agreement</b>	\$191,000	\$191,000	\$7,358,000
<b>Free Trade Agreements:</b>			
Australia FTA	77,533	77,533	7,358,000
Bahrain FTA	191,000	191,000	10,079,365
CAFTA – DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,533	77,533	7,358,000
Chile FTA	77,533	77,533	7,358,000
Colombia	77,533	77,533	7,358,000
Korea FTA	100,000	77,533	7,358,000
Morocco FTA	191,000	191,000	7,358,000
NAFTA:			
Canada	25,000	77,533	10,079,365
Mexico	77,533	77,533	10,079,365
Oman FTA	191,000	191,000	7,358,000
Panama FTA	191,000	191,000	7,358,000
Peru FTA	191,000	191,000	7,358,000
Singapore FTA	77,533	77,533	7,358,000
Israeli Trade Act	50,000	N/A	N/A

This final rule implements the new thresholds in FAR subpart 25.4, Trade Agreements, and other sections in the FAR that include trade agreements thresholds (i.e., FAR sections 22.1503, 25.202, 25.603, 25.1101, and 25.1102).

### [Sole Source Contracts for Women-Owned Small Businesses \(WOSB\) – Case 2015-032](#)

This interim rule revises the FAR to implement regulatory changes that the SBA has made in its final rule published in the Federal Register at 80 FR 55019, on Sept. 14, 2015, concerning sole source award authority under the WOSB Program. SBA's final rule grants contracting officers the authority to award sole source contracts to both economically disadvantaged WOSB (EDWOSB) concerns and to WOSB concerns eligible under the WOSB Program. The WOSB Program authorizes contracting officers to restrict competition to EDWOSB concerns and to WOSB concerns eligible under the WOSB Program for federal contracts, in certain industries that SBA has determined

to be underrepresented or substantially underrepresented by small business concerns owned and controlled by women. As in SBA's earlier WOSB Program set-aside rule, sole source awards under the WOSB Program are only permitted in the industries that SBA has determined to be underrepresented or substantially underrepresented by WOSB concerns. Implementation of these sole source procedures in the FAR ensures that contracting officers will have the tools necessary to maximize federal procurement opportunities for WOSB concerns.

## OTHER

### [Audit Guidance on the Impact of NDAA on DCAA's Audit Support to Non-Defense Agencies](#)

DCAA will stop providing audit support to non-defense agencies until it cuts down its backlog of incurred cost audits, according to a recent memo to regional directors. The 2016 NDAA prohibits DCAA from providing audit

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## REGULATORY UPDATES

unless the Secretary of Defense certifies that the backlog for incurred cost audits is less than 18 months of incurred cost inventory. According to the memo sent out to regional directors on Jan. 7, 2016, the DCAA "does not meet the requirement." While the NDAA prohibits DCAA from providing audit support to non-defense agencies/reimbursable customers, DCAA can continue to provide services that do not qualify as audit support, such as negotiation support, litigation support, investigative support and other non-audit services (i.e., requests for specific cost/rate information). Any in-progress audits that are 100 percent reimbursable will be abandoned, and DCAA will no longer accept any engagements to perform these types of audits. In the situations where a contractor's proposal/submission contains a mix of DOD contracts with non-DOD/reimbursable contracts, DCAA will continue to audit the indirect costs as they have in the past to determine the indirect rates, since the audit team cannot segregate DOD indirect costs from non-DOD indirect costs.

### [Establishing Paid Sick Leave for Federal Contractors, DOL Proposed Rule](#)

The DOL's notice of proposed rulemaking (NPRM), which would amend Title 29 of the Code of Federal Regulations (CFR) by adding part 13, proposes standards and procedures for implementing and enforcing Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors, signed by President Barack Obama on Sept. 7, 2015. This Executive Order requires certain parties that contract with the federal government to provide their employees with up to seven days of paid sick leave annually, including paid leave allowing for family care. By providing access to paid sick leave, this Executive Order aims to improve the health and performance of employees of federal contractors and bring their benefits packages in line with model employers, ensuring that federal contractors remain competitive employers and generating savings and quality improvements that will lead to improved economy and efficiency in Government procurement. This proposed rule therefore defines terms used in the regulatory text, describes the categories of contracts, and employees the Executive Order covers and excludes from coverage; sets forth requirements and restrictions governing

## BDO WELCOMES NEW ADDITION TO GOVERNMENT CONTRACTING PRACTICE

BDO's Government Contracts and Grants Advisory Services practice is excited to announce that **Dave Scott** has joined its team. Scott joins BDO as a managing director and will lead the firm's Integrated Program Management (IPM) and Earned Value Management (EVM) solutions practice.

In this role, Dave will leverage his deep experience in designing, implementing and supporting compliant IPM and EVM systems for both the U.S. government and federal government contractors to widen the group's IPM and EVM capabilities. His experience spans more than 25 years and a number of industries, including aerospace and defense and nonprofit organizations, as well as the Department of Defense and other federal agencies including the Federal Aviation Administration, Department of Energy and the National Aeronautics and Space Administration.

*"As the government contracting industry continues to evolve, Dave's proven experience supporting the complete federal acquisition lifecycle adds valuable perspective to our group. We're confident he will be a trusted advisor to our clients."*

– Eric Sobota, Partner in Charge with BDO's Government Contracts and Grants Advisory Service practice."

For more information, contact Dave Scott at [dmscott@bdo.com](mailto:dmscott@bdo.com).

the accrual and use of paid sick leave; and prohibits interference with or discrimination for the exercise of rights under the Executive Order. It also describes the obligations of contracting agencies, the DOL and contractors under the Executive Order, and it establishes the standards and procedures for complaints, investigations, remedies and administrative enforcement proceedings related to alleged violations of the order.

### [Optimal Use of the Government Contractor-Issued Travel,](#)

#### **GSA Proposed Rule**

This proposed rule by the GSA attempts to update the travel expenses and classes of employees exempt from mandatory use of a government contractor-issued travel charge card listed in the FTR (see FTR sections 301-

51.2 and 301-70.704). In order for agencies to maximize travel charge card rebates, the GSA has determined that these exemptions should be updated. Thus, the proposed rule emphasizes the need for agencies to maximize travel charge card rebates by increasing the use of the travel charge card. Additionally, this proposed rule updates the list of exemptions to the mandatory use of a government contractor-issued travel charge card, with the goal being to increase the issuance and appropriate use of travel charge cards for employees on official travel.

# SIGNIFICANT ACCOUNTING & REPORTING UPDATES

## FASB Issues New Guidance on Accounting for Leases

On Feb. 25, 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-02, *Leases (Topic 842)*, to improve financial reporting about leasing transactions. Under the new guidance, a lessee will be required to recognize assets and liabilities for leases with lease terms of more than 12 months. Consistent with current Generally Accepted Accounting Principles (GAAP), the recognition, measurement and presentation of expenses and cash flows arising from a lease by a lessee will primarily depend on its classification as a finance or operating lease. However, unlike current GAAP, which requires only capital leases to be recognized on the balance sheet, ASU 2016-02 will require both types of leases to be recognized on the balance sheet. ASU 2016-02 will also require disclosures to help investors and other financial statement users better understand the amount, timing and uncertainty of cash flows arising from leases. These disclosures include qualitative and quantitative requirements, providing additional information about the amounts recorded in the financial statements.

ASU 2016-02 will take effect for public companies for fiscal years, and interim periods within those fiscal years, beginning after Dec. 15, 2018. For all other organizations, ASU 2016-02 will take effect for fiscal years beginning after Dec. 15, 2019, and for interim periods within fiscal years beginning after Dec. 15, 2020.

## FASB Issues Targeted Amendments to the Recognition and Measurement Guidance for Financial Instruments

The FASB recently issued ASU 2016-01 which requires an entity to:

- ▶ measure equity investments at fair value through net income, with certain exceptions;
- ▶ present in other comprehensive income the changes in instrument-specific credit



risk for financial liabilities measured using the fair value option;

- ▶ present financial assets and financial liabilities by measurement category and form of financial asset;
- ▶ calculate the fair value of financial instruments for disclosure purposes based on an exit price; and
- ▶ assess a valuation allowance on deferred tax assets related to unrealized losses of available-for-sale debt securities in combination with other deferred tax assets.

ASU 2016-01 allows entities to subsequently measure certain nonmarketable equity investments at cost, less any impairment and adjusted for certain observable price changes. ASU 2016-01 also requires a qualitative impairment assessment of such equity investments and amends certain fair value disclosure requirements. The amendments are effective for public business entities for fiscal years, and interim periods within those fiscal years, beginning after Dec. 15, 2017. For all other entities, the amendments in this update are effective for fiscal years beginning after Dec. 15, 2018, and interim periods within fiscal years beginning after Dec. 15, 2019, with early adoption permitted for fiscal years beginning after Dec. 15, 2017, including interim periods within those years.

## FASB Issues ASU to Classify the Presentation of Deferred Taxes in a Balance Sheet

The FASB has recently issued ASU 2015-17, eliminating the guidance in Topic 740, *Income Taxes*, which required an entity to separate deferred tax liabilities and assets between current and noncurrent amounts in a classified balance sheet. The amendments require that all deferred tax liabilities and assets of the same tax jurisdiction or tax filing group, as well as any related valuation allowance, be offset and presented as a single noncurrent amount in a classified balance sheet.

Prior U.S. GAAP required that in a classified balance sheet, deferred tax liabilities and assets be separated into a current and a noncurrent amount on the basis of the classification of the related asset or liability. If deferred tax liabilities and assets did not relate to a specific asset or liability, such as a carryforward, they were classified according to the expected reversal date of the temporary difference. The new standard is effective for public business entities for fiscal years, and for interim periods within those fiscal years, beginning after Dec. 15, 2016. For all other entities, the amendments are effective for fiscal years beginning after Dec. 15, 2017, and for interim periods within fiscal years beginning after Dec. 15, 2018.

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## SIGNIFICANT ACCOUNTING & REPORTING UPDATES

### FASB Issues Proposal to Improve Disclosure Requirements for Fair Value Measurement

In December 2015, the FASB issued proposed amendments that would improve disclosures about fair value measurements by removing, modifying or adding certain disclosure requirements.

The FASB will determine the effective date after considering stakeholder feedback on the proposed amendments.

### FASB Issues Proposal Clarifying the Definition of a Business

In November 2015, the FASB issued proposed amendments that would clarify the definition of a business, with the objective of adding guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses.

The FASB will determine the effective date and whether the proposed amendments may be applied before the effective date after it considers stakeholder feedback on the proposed amendments.

### FASB Issues Proposal to Disclose Material Existing Government Assistance Agreements

In November 2015, the FASB proposed amendments that would require certain disclosures about material existing government assistance agreements for annual reporting periods.

The exposure draft does not propose any new accounting requirements. The effective date will be determined after the FASB considers stakeholder feedback on the proposed amendments.

### EITF Issues Proposal for Classification of Items within the Statement of Cash Flows

In November 2015, the Emerging Issues Task Force (EITF) is proposing to clarify Topic 230 regarding the classification of items within the statement of cash flows where diversity in practice has been identified. Proposed

amendments to address eight specific cash flow issues are expected in early 2016 to address stakeholders' concerns that current GAAP is either unclear or does not include specific guidance.

### FASB and IASB Joint Transition Resource Group for Revenue Recognition

During Q4 2015, the FASB and the International Accounting Standards Board (IASB) (Boards) continued to deliberate proposed amendments to the new revenue recognition standard regarding principal versus agent considerations, licenses of intellectual property and identifying performance obligations, and narrow scope improvements and practical expedients. The FASB expects to issue final guidance on each of these issues, though not by early 2016.

Also during the quarter, the Transition Resource Group (TRG) members discussed several issues related to the new revenue recognition standard, including:

- ▶ determining whether customer options for additional goods and services should be accounted for as a material right, as a separate contract or as part of the accounting contract;
- ▶ accounting for renewals of time-based licenses and identifying attributes of a single license versus additional licenses;
- ▶ assessing pre-production activities and accounting for costs in the scope of specific U.S. GAAP guidance; and
- ▶ the scope of certain gaming activities.

The number and frequency of additional TRG meetings in 2016 will depend on the volume of issues submitted by constituents.

### FAST Act Amends SEC Reporting Requirements

On Dec. 4, 2015, the president signed the Fixing America's Surface Transportation (FAST) Act into law. While the Act is focused on providing transportation funding, certain provisions of the Act amend the securities laws. Some of the amendments are self-executing, while others require SEC rulemaking.

The amendments included in Title LXXI of the Act are intended to improve access to capital for emerging growth companies (EGCs) by reducing the number of days an EGC's confidential submissions must be made public before its IPO roadshow, providing a grace period for an EGC that loses EGC status prior to its IPO, and permitting an EGC to omit historical periods from its financial statements if it reasonably expects that such periods will not be included in its effective registration statement.

Other significant changes to securities laws included in the FAST Act require SEC rulemaking or additional analysis. The provisions related to Title LXXI became effective upon issuance on Dec. 4, 2015, except for the provision permitting an EGC to omit historical periods from its financial statements in certain circumstances, which is effective Dec. 28, 2015.

### Final Rule, Crowdfunding

The SEC adopted Regulation Crowdfunding, as mandated by Title III of the Jumpstart Our Business Startups Act ("JOBS Act"). Regulation Crowdfunding prescribes rules governing the offer and sale of securities under new Section 4(a)(6) of the Securities Act of 1933. Section 4(a)(6) exempts from registration under the 1933 Act a securities offering of less than \$1 million on an aggregate basis during a 12-month period, provided that the offering is conducted through a broker or funding portal. Regulation Crowdfunding also provides a framework for the regulation of registered funding portals and broker-dealers that issuers are required to use as intermediaries in the offer and sale of securities in reliance on Section 4(a)(6). In addition, Regulation Crowdfunding conditionally exempts securities sold pursuant to Section 4(a)(6) from the registration requirements of Section 12(g) of the Securities Exchange Act of 1934. The final rules and forms are effective May 16, 2016, except Form Funding Portal and amendments to Form ID, which are effective Jan. 29, 2016.

## MARK YOUR CALENDAR...

### APRIL

**April 17**  
**2016 Professional Services Council Annual Conference\***

The Greenbrier  
 White Sulphur Springs, W.Va.

**April 20-21**  
**Unanet Champions Conference\***

Ritz-Carlton Tysons Corner  
 McLean, Va.

**April 24-27**  
**JAMIS 2016 Summit\***

Hilton San Diego Resort & Spa  
 San Diego

**April 28**  
**BDO 3rd Annual Executive Seminar for Government Contractors\***

Ritz-Carlton Tysons Corner  
 McLean, Va.

### MAY

**May 3-4**  
**U.S. Defense Leadership 2016 Navy Contracting Summit**

NAVSTA Norfolk  
 Norfolk, Va.

**May 12**  
**SECAF 8th Annual Government Contractor of the Year Awards Gala\***

Hilton McLean  
 McLean, Va.

**May 12**  
**Alaska Government Contracting Summit\***

Hotel Captain Cook  
 Anchorage, Alaska

\* indicates that BDO is attending or hosting this event

**May 16-20**  
**Fed Pubs Cybersecurity in Government Contracts Institute**

Hyatt Regency La Jolla at Aventine  
 La Jolla, Calif.

### JUNE

**June 1-3**  
**EVM World Conference\***

Naples Grande Beach Resort  
 Naples, Fla.

**June 8-9**  
**NASBP Federal Construction Contracting Seminar**

Hyatt Regency Washington on Capitol Hill  
 Washington, D.C.

**June 8**  
**ACQUIRE Conference & Expo**  
 Walter E. Washington Convention Center  
 Washington, D.C.

### UPCOMING WEBINARS



**APRIL**  
**Earned Value Management – Introduction & Industry Trends**

**MAY**  
**M&A – Buying and selling businesses, buy/sale-side due diligence and considerations and trends for government contractors**

**JUNE**  
**Marketplace Outlook**

Stay tuned [here](#) for more details.

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### ABOUT BDO USA

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