FALL 2015
www.bdo.com

THE NEWSLETTER FROM THE BDO GOVERNMENT CONTRACTING PRACTICE

BDO KNOWS: GOVERNMENT CONTRACTING

DISTRIBUTION THROUGH A RESELLER: RISKY BUSINESS

By Tom Fuchs

Can relying on a reseller or distributor that holds a Government Services Administration (GSA) contract shield manufacturers from the risks associated with selling to federal government customers? Not so much, if recent history is any indication.

There are a number of reasons would-be government contractors choose to use indirect channels to reach federal customers. Reselling allows manufacturers to expand their network of potential customers by tapping into the reseller's market without taking on the costs associated with marketing or investing in a distribution network of their own. A reseller or distributor might also have more access to and experience working with federal contract vehicles and obtaining awards, and could be a beneficial partner for a manufacturer looking to enter the government contracting space. Finally, a manufacturer or original equipment manufacturer (OEM) may believe it is easier to "shed the risk" of complying with disclosure, reporting and monitoring requirements by arranging the deal such that another party holds the contract with the government.

Since the Department of Justice announced in June that software manufacturers VMWare, Inc. and Carahsoft Technology Corporation had agreed to a settlement amid allegations of misrepresentation of their commercial sales practice disclosures, there have been discussions in numerous forums around the risks inherent to government contracting. The interesting part about this settlement in particular is that it includes the manufacturer in its allegations of inaccurate sales practices

DID YOU KNOW...

According to *Washington Technology's* 2016 Trends in Government Purchasing Report, 30 percent of government buyers expect to spend more in 2016, compared to 25 percent who expected to spend more this past year.

Federal employees worked 6.6 million fewer hours during the 16-day government shutdown in October 2013, resulting in a 0.3 percent dip in the nation's economic growth, according to a recent Congressional Research Service analysis.

A recent Unisys survey found that 98 percent of government agencies will maintain or increase their use of contractors on projects to leverage big data over the next year.

According to a Government Accountability Office report, government agencies reported total savings of $3.6 billion between 2011 and 2014, of which $2 billion (55.4 percent) can be attributed to data center consolidation efforts.

Ninety-one percent of aerospace and defense executives believe R&D-driven innovation is important in maintaining the industry's progress, and 92 percent believe that government should always or often support commercial R&D-driven innovation, reports Avascent's Survey on Innovation and Competitiveness.

Read more

CONTINUED FROM PAGE 1

RISKY BUSINESS

disclosures, in addition to the reseller that held the GSA contract in question.

The settlement should be taken as a reminder that using a reseller doesn't fully insulate a manufacturer or other entity selling or licensing products from liability for government contract pricing compliance. However, with appropriate planning, contract monitoring and compliance activities, the use of resellers can help to mitigate some of the risks present within the federal supply schedule (FSS) contracting environment.

WHAT ARE THE RISKS INVOLVED?

The VMWare settlement shines a spotlight on the potential pitfalls that can arise when distributing via a reseller model, including:

Selecting the wrong partner: If a company fails to consider long-term strategy, it can miss out on the full potential of this partnership as a catalyst for growth. Even if the partnership begins on a deal-by-deal basis, it's important to consider long-term potential when selecting a channel partner.

Inadequate planning: Preparation and planning should not be taken lightly, as poor deal and contract structuring can result in unforeseen end user costs. OEMs should take care to determine responsibility for marketing costs, as well as responsibility for troubleshooting and support, which can be particularly costly for software manufacturers. Responsibility should be clearly established in the contract between manufacturer and reseller.

Loss of pricing control in the market: Although antitrust guidelines on pricing vary based on the reselling model—whether the reseller is an agent or a distributor—companies can end up inadvertently competing with themselves in the market. Giving up contract control of the product leaves the door open for a reseller to lower prices, forcing a developer into a downward price spiral to remain competitive.

Commercial sales pricing (CSP) disclosure: If the manufacturer is using an indirect channel to reach federal government customers, as in the case of VMWare and Carahsoft, a number of potential costs and obligations exist when disclosing pricing practices to the government for price determination.

NAVIGATING CSP DISCLOSURES

Under the Multiple Award Schedule Program, the GSA requires vendors seeking a contract to provide a "current, accurate and complete" disclosure of the prices and/or discounts they offer to commercial customers so that it can negotiate a fair price. The CSP is a fundamental requirement for FSS agreements and is often cited by manufacturers as something they could avoid when working with a reseller.

This isn't, however, always the case. Resellers are often deemed by the GSA to have insufficient independent sales of the manufacturers' products to make the GSA comfortable with the resellers' CSP. When the OEM has to prepare a CSP—usually in a rush due to real or imagined time constraints—they often end up putting in as much work to accurately prepare the CSP as they would in pursuing a contract of their own.

The introduction of the manufacturers' CSP data could significantly alter the price that the reseller was hoping to offer. This occurs because the resultant CSP is based on pricing data from two different companies with two potentially very different strategies. A manufacturer's CSP is based on sales to its own customer segments, including the one that the reseller falls within. A reseller's CSP takes into account the discounting and pricing strategies used to successfully win business in their market, and wouldn't necessarily include sales by the OEM.

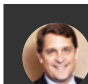
When the GSA compares a manufacturer's and reseller's CSPs, it could appear that the manufacturer has lower pricing for the same products than the reseller does, especially if the manufacturer has a broad-based approach to marketing its products through a variety of channels and a dynamic pricing environment. The GSA's Transactional Data Rule (TDR), proposed earlier this year, could also increase the importance of CSPs in FSS contracting. It eliminates the Price Reduction Clause, leaving the CSP as the primary basis for price negotiation and administration in FSS contracts. Implementation of the TDR could result in an ongoing series of CSPs being necessary to ensure pricing compliance.

RISK MANAGEMENT: NEGOTIATING THE CONTRACT AND CSP

Due diligence around pricing is a critical area for manufacturers to consider when indirectly selling to an FSS customer. If the reseller has no significant sales to the general public, the manufacturer must provide the contracting office with a CSP disclosure. If the reseller holding the FSS contract does have significant sales to the public, then the manufacturer is required to provide a country of origin statement, along with a letter of supply authorizing the reseller to supply its products to the FSS customer.

Before selling to a GSA or VA customer via a reseller, manufacturers should perform a thorough analysis of pricing practices to ensure that CSP disclosures are accurate and thorough. This process should be repeated with some regularity to ensure that disclosures are current and accurate. In the case of software, the contract between the reseller and the end user is critical in protecting the developer's intellectual property and determining where the responsibility for support and marketing costs will lie. Manufacturers, like resellers, need to be sure that the right people, processes and systems are in place to fulfill any obligations associated with selling to an FSS customer.

Selling via an indirect channel doesn't shield a developer from the consequences of non-compliance. It's critical that all obligations and responsibilities be explicitly stated in the contract between developer and reseller in order to fully understand their obligations and avoid unanticipated costs down the line. The settlement reached by VMware and Carahsoft serves as an example of the importance of ensuring a full understanding of both parties' responsibilities in any distribution arrangement. Even if a manufacturer is not explicitly tied to an FSS agreement, ensuring that the underlying commercial relationship between the OEM and the reseller is appropriate, and managed (regardless of whether a government contract is part of it) is key to mitigating risk and ensuring that the mutual benefits originally anticipated will occur.



For more information, please contact Tom Fuchs, Managing Director with BDO's Government Contracts Advisory Services practices, at tfuchs@bdo.com.

Read more ▶

SENDING AN EMPLOYEE OVERSEAS?
7 Questions for Contractors to Ask First

By Jeff Schragg and Brad Veltkamp

Won an international contract? Congratulations! The next step is getting a project leader on the ground—overseas. No problem, right? Not necessarily. It's important to take a step back to gauge your readiness.

While a contract with a global reach can mean a boon for business, it can also have complex tax implications for both the individual and the company.

Before sending that employee abroad, be certain you can answer a few basic questions. Without an answer for even one of them, you may not be as ready as you think you are.

1 How long is the employee's international assignment?

The length of the assignment will often have a direct impact on the type and amount of taxation the individual may become subject to. If an individual will be working abroad for less than one year, many expenses, like housing, car and per diems, can be provided to the employee without any U.S. tax implications. Similar rules allowing for the exclusion of certain company-provided benefits, based on time and intent, exist in other countries, as well.

Furthermore, the U.S. has income tax treaties in some countries. In these locations, keeping the length of assignment under 183 days might enable you to avoid taxation in the host country altogether.

2 Is the employee expected to be responsible for tax in the new location, or will the company help?

This is typically the first question that the employee will ask before accepting the relocation offer. With tax rates exceeding 50 percent in some nations, this can be a very expensive question for both the individual and the company.

First, consider whether the project will qualify for an exemption under a status of forces agreement (SOFA).[1] The U.S. has some form of SOFA with about 100 nations, and the ability to utilize tax status under a SOFA can eliminate liability for income and payroll taxes in the host location. It's worth noting, of course, that SOFA status does not apply to every overseas project.

If the project doesn't qualify for exemption under a SOFA, tax responsibility in the new location can be approached in several ways:

- The individual retains full responsibility for his or her own taxes (if the move is a permanent transfer);
- The individual can benefit from lower tax rates, but receives tax protection or assistance from the company if the tax rate is higher; or
- The company provides full tax equalization with the individual paying no more (or less) in tax abroad than in the home country.

In a situation where the company will assist, whether fully or in part, with taxation impacts, the cost of sending the employee overseas can dramatically increase.

3 What support will the individual be provided?

Of course, tax is not the only financial burden that the individual may need help with. Assistance might be needed beyond the costs a company might normally cover, such as immigration assistance and helping with the shipping of household goods. Everyday living costs, such as rent and groceries, as well as benefits and variable costs like healthcare or a child's education, can differ significantly in other countries. For example, overseas schools: Will the employee's current pay package cover any cost increases? Though these personal costs can get overlooked in the bidding process, they can quickly add up, changing the profitability outlook of the project.

4 Which entity bears the cost of the transfer/assignment?

Does your company have a separate entity in the host location? If not, do you need one? Once this is settled, consider your corporate tax exposure. Deductions for corporate tax purposes will need to correspond to the areas where costs are borne. This could also impact whether the U.S. entity is considered to have a permanent establishment in the foreign location, which can raise its own set of tax consequences.

From the individual's perspective, this is also a very important question. If the intent of the assignment is to utilize an income tax treaty to avoid taxation in the host country, then the cost of the transfer needs to remain in the home country in order to benefit from the treaty.

5 Where and how will the individual be paid?

The answer to this question depends most on the individual's need. If the employee has significant expenses in the U.S., remaining on the U.S. payroll is preferred—especially as it will allow the employee to maintain the ability to participate in certain benefit programs, such as a 401(k) or pension. From a company perspective, it's important to compare the reporting requirements in each location. Additionally, depending on the location, the company may also be subject to withholding requirements in multiple locations, which could necessitate putting into place shadow or mirror payrolls.

Read more ▶

CONTINUED FROM PAGE 3

7 QUESTIONS

If the host location has a social security system, the company and/or the individual may be required to contribute to it in addition to the U.S. social security system if the individual remains a U.S. employee. In some countries, the employer's required contribution to social security can be higher than the income tax rate. The U.S. has worked to mitigate this by entering into Totalization Agreements[2] with a number of countries worldwide.

6 What role will the employee perform and which entity (or entities) will benefit from the services?

Identifying the "economic employer" to be used in the determination of permanent establishment is tied to some important corporate tax implications. The entity that is deemed as the economic employer can be different than intended, as it is a facts and circumstances test. Here again, the corporate tax deduction is often tied to the entity identified as the economic employer. It is important for the corporate tax department to understand the answer to this question as it looks at any transfer pricing implications and ensure it is accounting for the costs appropriately.

Similar to the determination of which entity bears the cost of the assignment, this question also has implications for the individual if it is expected that an income tax treaty will be utilized to keep tax costs down. The answer may not be so simple as identifying which entity will pay the individual. The answer will be based on a number of personnel-related considerations and circumstances, including who manages the employee day-to-day, who has the right to terminate the employee and which entity receives direct or indirect benefits of the output from the employee.

7 What documentation should company have regarding the transfer?

When the time comes to transfer the employee overseas, it's important that all aspects of the assignment be documented and agreed upon by all parties. Specifically, signed assignment letters between the company and the individual can help avoid unforeseen negotiation later. In addition, a secondment letter can be helpful for navigating corporate tax considerations, as it will outline how the entities will account for the employee throughout the duration of the assignment. For employers planning to transfer employees abroad on an ongoing basis, putting in place a defined relocation policy and tax policy outlining what benefits will accrue to the individual and who will be responsible for the cost of various items will help ensure a smooth process in the future.

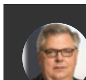
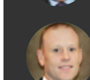
From a procedural perspective, it's important to obtain new payroll documentation, including new W-4 forms and Form 673, from the individual before departure. It's likely that more payroll or other registration documentation will need to be gathered in the host location. Both of these documents allow the U.S. payroll to reduce or eliminate the U.S. tax withholding while the individual is abroad.

Addressing these questions serves as a productive first step toward avoiding significant unforeseen cost overruns that could hamper your company's ability to complete the project in a profitable manner. Foresight and planning takes time upfront, but taking the time to answer these and other pertinent questions can help contractors get feet on the street abroad without a hitch.

---

1 A Status of Forces Agreement is an agreement between two countries allowing one country to station its military forces in the other's territory. The agreement defines the responsibilities and rights of the personnel stationed in the host country. The United States has a number of SOFAs in place, including agreements with Japan, South Korea and Iraq, among others.

2 Totalization Agreements are tax treaties between countries that aim to eliminate double liability for social security taxes (e.g., so that a U.S. citizen stationed abroad needn't pay social security or similar taxes to both the United States and the host country). For more information, visit https://www.irs.gov/Individuals/International-Taxpayers/Totalization-Agreements.

For more information, please contact Jeff Schragg, Tax Partner, at jschragg@bdo.com or Brad Veltkamp, Senior Manager with BDO's Expatriate Tax Services, at bveltkamp@bdo.com.

SPOTLIGHT ON: **BDO IN THE COMMUNITY**

BDO COUNTS! Give back. It adds up.

BDO Counts represents nationwide programs and local service initiatives that give our individuals and offices the opportunity to give back to their communities.

During BDO's annual Week of Service in September, our volunteers collaborated with **Our Military Kids, Inc.**, a 501(c)(3) nonprofit organization created to provide support and recognition to military children ages 5 years through the 12th grade. During our volunteer day at Our Military Kids, BDO professionals assisted with various back office and program outreach activities.

Our Military Kids works with children of deployed National Guard and Reserve service members, along with children of Wounded and Fallen Warriors from all branches of service. Between 2005 and 2014, the organization has provided more than 49,000 grants totaling $20 million to children of deployed service members from every branch of the military and in all 50 states.

Read more

HOW DOES YOUR COMPANY'S 401(K) PLAN COMPARE TO YOUR COMPETITORS'?

By Ed Plunkett & Amy Thorn

In an era of ongoing budget constraints and uncertainty, the federal government continues to seek lowest priced technically acceptable (LPTA) solutions, creating challenges for contractors as they seek to remain competitive in this resource-constrained environment while also retaining the best and brightest employees.

In particular, contractors jockeying for top talent find themselves grappling with the benefits they offer employees, such as retirement contributions and health insurance. These benefits play a major role not only in attracting and retaining personnel, but also in assessing costs and overhead.

BDO's Government Contracting practice has compiled both quantitative and qualitative data related to defined contribution plans sponsored by privately held government contractors for the year ended December 2014. Below, we provide a summary of results against which you can benchmark your current 401(k) benefits and plan governance.

FIDUCIARY DUTIES

Sponsors of employee benefit plans are considered fiduciaries under the Employee Retirement Income Security Act (ERISA) of 1974, as amended. Fiduciary responsibilities include timely filing of the Form 5500 and obtaining a financial statement audit (if required), as well as adequate oversight in the selection and monitoring of the plan's service providers. Additional fiduciary responsibilities include establishing adequate controls within the plan sponsor organization to ensure the plan is operating in accordance with plan documents and the related rules and regulations of the IRS and Department of Labor.

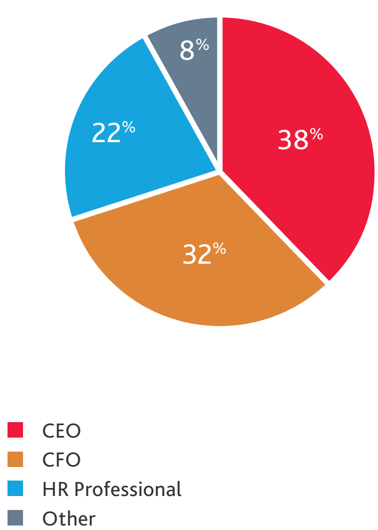
Our data found that 70 percent of the plans assessed designate the CEO or CFO as the primary fiduciary, while 22 percent assign responsibility to a human resources professional. Some of those plans also use a third-party investment advisor to assist in the selection of investment options offered by the custodian, while others rely on the information and investment advice provided directly by the custodian's investment advisors.

COMPANY CONTRIBUTIONS

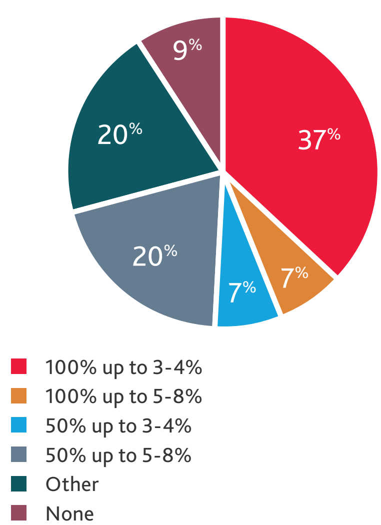
It comes as little surprise that matching is a key benefit provided under many contractors' 401(k) plans. Not only does this incentivize employees to take advantage of the plan, but it also builds their loyalty to the organization. Our data found that the vast majority (91 percent) of plans analyzed offer contribution matching, with more than one-third of companies providing 100 percent matching to employees contributing up to 3 to 4 percent of their pretax income. One-fifth of companies provide 50 percent matching to employees contributing 5 to 8 percent of their pretax income.

In terms of vesting, more than half of the plans we studied vest immediately, while nearly a quarter vest over a period of two to four years. Of those plans that offer immediate vesting, most have adopted a safe harbor 401(k) plan in order to avoid certain annual compliance testing. Under safe harbor plans, mandatory employer contributions must be fully vested when made.

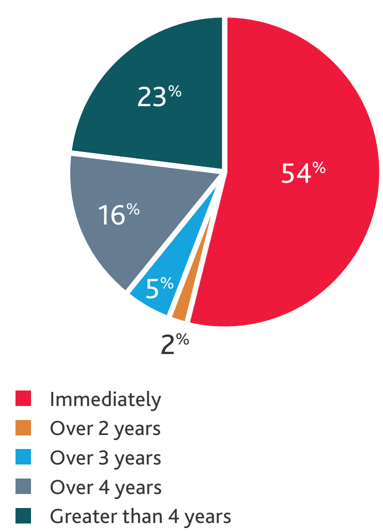
PRIMARY FIDUCIARY



COMPANY MATCHING CONTRIBUTIONS



VESTING OF COMPANY CONTRIBUTIONS



Read more

CONTINUED FROM PAGE 5

401(K) PLAN

BEST PRACTICES FOR PLAN GOVERNANCE

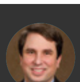
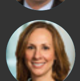
Based on our research and our work with contractors on their 401(k) plans, we found that some of the most successful plan sponsors convene internal committees to oversee company retirement plans. General duties should include, but are not limited to, the following:

- Meeting regularly and maintaining minutes of all meetings.
- Understanding, implementing and maintaining plan documents and amendments.
- Developing, executing and monitoring an investment policy.
- Monitoring investment performance and reasonableness of fees paid by the plan to custodians and/or administrators.
- Developing administrative policies and procedures, such as a remittance policy, long-outstanding check policy and a schedule of required participant communications.

LOOKING FOR MORE INFORMATION?

Listen to our recent webinar on fiduciaries and the different types of service providers available to them here: https://university.learnlive.com/login.aspx?brandingid=1272&ref=/CourseDesc.aspx?course_id=507306

If you would like to review the latest *EBP Commentator* you may do so here: https://www.bdo.com/insights/assurance/ebp-commentator/ebp-commentator-summer-2015

For more information, please contact Ed Plunkett and Amy Thorn, both partners with BDO's Government Contracting practice, at eplunkett@bdo.com and athorn@bdo.com, respectively.

BDO WELCOMES NEW PROFESSIONALS TO GOVERNMENT CONTRACTING PRACTICE

BDO's Government Contracting practice is pleased to announce that it has added **Derek Ellis** and **Derek Shaw** to its team. Mr. Ellis joins BDO as a senior director and member of the Business Services & Outsourcing team, focusing on providing services to government contractor clients, while Mr. Shaw joins BDO's Government Contracting Advisory Services practice as a director.

Derek Ellis has more than 20 years of experience providing financial advisory services to government contractors. Over the course of his career, he has led finance and accounting initiatives in support of diverse stages of growth, restructure and consolidation, and he is deeply experienced in a wide range of service offerings, including financial operations, capital structure, financial planning and analysis, system implementations and cash flow optimization. At BDO, he will provide customized outsourcing solutions to clients and help companies create value by aligning back office infrastructure with corporate strategy. Mr. Ellis holds an MBA from George Mason University and a Bachelor of Business Administration in Finance from Radford University.

Derek Shaw brings to BDO nearly three decades of government contracting experience, specializing in compliance matters and M&A services. He has held senior management positions with large corporations and has extensive hands-on experience with small and mid-sized contractors, including SDB/8a firms. He has also been a frequent speaker at training conferences and has developed and delivered training programs covering various government contracting topics. Mr. Shaw is based in New York and will be focused on developing BDO's government contracting portfolio across the Northeast. He holds a Bachelor of Science degree from Embry-Riddle Aeronautical University and a graduate certificate in Executive Management from the University of California, Los Angeles.

"We are thrilled to welcome Derek and Derek to the Government Contracting group," said Chris Carson, leader of the Government Contracting practice at BDO. "They are both instrumental to our ongoing efforts to grow our practice, add new capabilities and elevate the services we provide to our clients nationwide."

For more information, please contact Derek Ellis or Derek Shaw at dellis@bdo.com or dshaw@bdo.com, respectively.

Read more

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

Evaluating Price Reasonableness for Commercial Items – Case 2013–D034: The Department of Defense (DOD) issued a proposed rule, as required by the National Defense Authorization Act (NDAA) of 2013, to provide further guidelines on instances when contractors providing certain types of items and services (e.g., commercial) submit "other than certified cost or pricing data" in an effort to determine price reasonableness. The proposed rule establishes new definitions, including "market-based pricing" and "relevant sales data."

- **Market-based pricing** is established when sales of a particular item to non-governmental buyers in a commercial marketplace account for a preponderance (at least 50 percent) of volume.
- **Relevant sales data** is a subset of an offeror's sales data that, given the age, volume and nature of the transactions, a prudent person would base a determination of price reasonableness upon.

The proposed rule places an emphasis on a Contracting Officer's ability to exercise judgment in requesting price and sales data from offerors and making determinations with respect to price reasonableness. It states that Contracting Officers should only request data to the extent a prudent person would in his/her effort to determine price reasonableness.

Once received, the proposed rule establishes a hierarchy for the type of relevant sales data that Contracting Officers should use to establish price reasonableness. A preference is given for market-based sales data for the same good or service, followed by market-based sales data for substantially similar goods or services. Sales data for the same or substantially similar goods or services that do not reflect market prices are given third and fourth preference, respectively.

Finally, the proposed rule directs Contracting Officers to exercise "prudent business judgment" in evaluating the sales data provided, taking into consideration factors such as the age of the data, volume of sales, nature of the transactions (e.g., terms and conditions, market or economic factors, discounts received) and available catalog prices.

Detection and Avoidance of Counterfeit Electronic Parts – Further Implementation – Case 2014-D005: DOD issued a proposed rule on Sept. 21, 2015 that would revise its recently implemented Counterfeit Electronic Parts regulations. While the previous counterfeit rules were restricted to CAS-covered contractors, the new clause would apply to all DOD contractors and subcontractors at all tiers.

Additional proposed changes include removing embedded software and firmware from the regulation, citing its primary relevance to hardware. DOD states that further regulatory standards are still under development with respect to the testing of software and firmware.

Final DFARS Rules

Network Penetration Reporting and Contracting for Cloud Services (Interim Final Rule) – Case 2013-D018: DOD issued a new interim rule requiring contractors to report cyber incidents affecting covered contractor or DOD information systems, or impacting a contractor's ability to provide operationally critical support. The new rule also outlines new policies for DOD purchases of cloud computing services.

The new rule updates a previously implemented rule requiring contractors to report breaches of systems containing unclassified controlled technical information, broadening requirements to address breaches in all contractor systems involving "covered defense information." This new type of information is defined as:

1. Information provided to a contractor by DOD or on DOD's behalf; or collected, developed, received, transmitted, used or stored by or on behalf of the contractor in support of the performance of the contract; and
2. Falling into any of the following categories:
   a. Controlled technical information,
   b. Critical information,
   c. Information covered by export controls, or
   d. Any other information marked or otherwise identified in the contract as requiring safeguarding.

In addition, the rule formalizes the DOD policy of only awarding cloud computing purchases to contractors that have been approved by the Defense Information Systems Agency and have implemented safeguards for protecting DOD's information.

Proposed FAR Rules

Consolidation and Bundling of Contract Requirements – Case 2014-015: DOD, Government Services Administration (GSA) and National Aeronautics and Space Administration (NASA) have proposed a rule that will implement revisions to the FAR in accordance with regulatory changes made by the Small Business Administration (SBA). In particular, the proposed revisions clarify the requirements whereby agencies can bundle or consolidate contract requirements, and places a limitation of $2 million on the value of bundled requirements without justification by an agency's Senior Procurement Executive/Chief Acquisition Officer.

Read more

CONTINUED FROM PAGE 7

REGULATORY UPDATES

In order to exceed the $2 million threshold, an agency must:

1. Justify the bundling or consolidation by showing its benefits substantially exceed the benefits of any approach involving a lesser degree of consolidation; and

2. Identify any negative impact the bundling or consolidation may have on small businesses.

The proposed rule also requires agencies to provide notification of their intent to bundle contract requirements that were not previously bundled. This would include:

1. Providing notification to current small business contractors at least 30 days in advance;

2. Notifying the public via the agency's website, including a rationale for the consolidation;

3. Alerting the SBA if it is a follow-on bundled or consolidated contract requirement; and

4. Publishing the government-wide policy with respect to contract bundling on the agency website.

Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations – Case 2015-020: The proposed rule is designed to implement a higher simplified acquisition threshold for overseas acquisitions in support of humanitarian or peacekeeping operations in accordance with 41 U.S.C. 153.

For acquisitions of supplies or services outside of the United States used in support of humanitarian or peacekeeping operations, as determined by an agency head, the simplified acquisition threshold has increased to $300,000.

Final FAR Rules

Clarification on Justification for Urgent Non-Competitive Awards Exceeding One Year – Case 2014-020: Effective Aug. 3, 2015, and for non-competitive contracts awarded on a basis of unusual or compelling urgency with a period of performance of greater than one year, the awarding agency head must determine that exceptional circumstances apply and it must be documented in the contract file.

In addition, any subsequent modification or extension of the contract requires a separate designation and approval by an employee at the same level as the initial determination. These changes apply to all contracts that exceed the simplified acquisition threshold.

Permanent Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items – Case 2015-010: Beginning Aug. 3, 2015, acquisitions of certain commercial items greater than the simplified acquisition threshold but not exceeding $6.5 million ($12 million in certain circumstances) will be subject to simplified acquisition procedures found in FAR subpart 13.5, as long as Contracting Officers can ensure the acquisition only includes commercial items. The purpose of these simplified procedures is to increase efficiency and minimize the burden and administrative costs for both the government and contractors.

The threshold is extended to $12 million at the direction of an agency head in support of contingency operations or to facilitate a defense against or recovery from a nuclear, biological, chemical or radiological attack.

Prohibition on Contracting with Inverted Domestic Corporations – Representation and Notification – Case 2015-006: Effective Nov. 1, 2015, contractors with the modified clause FAR 52.209-2 (November 2015) included in contracts must indicate whether they are an inverted domestic corporation, per 6 U.S.C. 395, or a subsidiary of one. In addition, those contractors must notify the Contracting Officer if, during a contract period of performance, they become an inverted domestic corporation or a subsidiary of one.

Other

Notice of Rate Change in Effect As of Jan. 1, 2016 – Minimum Wage for Federal Contractors: Effective Jan. 1, 2016, the minimum wage that generally must be paid to workers performing work on or in connection with federal contracts covered by Executive Order 13658 will be $10.15 per hour, up from $10.10 per hour in 2015. In addition, the rate that must be paid to tipped employees performing work on or in connection to covered federal contracts will increase to $5.85 per hour.

Executive Order – Establishing Paid Sick Leave for Federal Contractors: Effective Jan. 1, 2017, federal contractors and subcontractors will be required to provide at least one hour of paid sick leave for every 30 hours worked by employees. The Order further requires contractors to not establish a limit of less than 56 hours on the amount of paid sick leave an employee can accrue at any one point in time (including year-on-year carryovers), and mandates that contractors reinstate leave accrued by employees rehired within 12 months of separation. The Order does allow contractors to require certification from employees regarding the necessity of leave if three or more consecutive days of sick leave are used.

DCAA Revised Checklist for Determining Adequacy of Contractor Incurred Cost Proposals: On Aug. 27, 2015, DCAA released its revised checklist, which updated the previous version dated April 2012. The revised checklist more closely aligns with the requirements of FAR 52.216-7(d)(iii): criteria establishing an adequate indirect cost rate proposal, whereas the previous version required auditors, at times, to request additional data and information from contractors.

In addition, the MRD associated with the revised checklist states that an incurred cost proposal **may** be deemed acceptable to audit even if multiple inadequacies are identified. It instructs DCAA audit teams to use "professional judgment" in determining a proposal's adequacy, as one significant inadequacy may disqualify a proposal in one

Read more

CONTINUED FROM PAGE 8

REGULATORY UPDATES

instance, but multiple minor inadequacies may not in other instances.

Evaluation of DCMA Actions on Reported Contractor Business System Deficiencies: The DOD Office of the Inspector General (DODIG) conducted an evaluation of DCMA actions on DOD contractor business system deficiencies as reported in 21 DCAA audit reports. The DODIG randomly selected 21 of the 164 deficiency reports issued between July 2012 and June 2013 for analysis. This follows a previously issued report addressing DCMA Contracting Officer actions on reported DOD contractor estimating system deficiencies.

The DODIG evaluation focused on whether Contracting Officers issued a timely initial determination, obtained a written contractor response within 30 days, evaluated that response, issued a timely final determination and withheld a percentage of payments (if applicable).

Findings of this report were that DCMA Contracting Officers did not comply with at least one DFARS requirement, and in six instances, no evaluated actions followed those requirements. In particular, Contracting Officers did not:

1. Issue timely initial and final determinations;
2. Obtain or adequately evaluate contractor responses; and
3. Withhold a percentage of contractor payments.

According to the DODIG, it took Contracting Officers an average of 252 days to issue final determinations, delaying the ability of contractors to implement corrective actions and the government's ability to obtain reliable data from said contractor systems. In addition, in eight instances the Contracting Officer did not withhold payments from Contractors with deficient systems in accordance with DFARS 252.242-7005(e).

PErspective in GOVERNMENT CONTRACTING

A number of trends in the government contracting space are expected to draw interest from private equity firms in the coming year. Given the continued onslaught of individual and state-sponsored cyber attacks, cybersecurity will remain high on the agenda for both the government and industry in 2016. There is strong demand for high-end network security solutions, and private equity firms are making significant investments in this area.

In September, the Carlyle Group—together with security and risk management advisory firm the Chertoff Group—acquired a majority stake in cybersecurity and technology services provider Coalfire Systems. Financial terms were not disclosed, but according to *Yahoo Finance*, Coalfire has 300 employees in the U.S. and U.K., and services 60 of the Fortune 500 as well as multiple other sectors, including local and state government entities.

"Cyber threats are an existential risk to governments, companies and individuals around the world. As the threat environment continues to accelerate, and bad actors continue to become more sophisticated, the demand for cutting-edge cybersecurity solutions will only increase," says Jason Kaufman, managing principal at the Chertoff Group. "Investment capital will certainly continue to pour into the cybersecurity industry, especially for highly innovative companies addressing the latest cyber risks."

Cybersecurity software firm Tanium—which enables clients to scan networks of up to several million computers and deploy patches or quarantine a detected bug in 15 seconds or less—recently raised $120 million at a $3.5 billion valuation in its third fundraising round in just over a year. The firm is now the highest-valued VC-backed cybersecurity company in the world, according to CB Insights research. The round was joined by private equity firm TPG Capital, T. Rowe Price and Institutional Venture Partners, *Reuters* reports.

Another sector that may garner increased attention from the private equity world in the coming year is that of professional employer organizations (PEOs), firms that provide human resources, benefits and compliance assistance solutions. Recently issued executive orders mandate improved labor standards for government contractors, such as an increased minimum wage and paid sick leave. Government contracting firms now face a complex patchwork of local, state and executive-ordered, labor-related obligations, and ensuring compliance is no easy task.

The PEO sector, currently worth up to $156 billion in gross revenues, has shown strong, consistent growth over the last 30 years and currently provides services to up to 180 million small and mid-sized businesses, according to the National Association of Professional Employer Organizations (NAPEO).

This October, Morgan Stanley Global Private Equity completed a majority investment in Tampa, Fla.-based PEO CoAdvantage, which provides outsourced human resources solutions to firms in all 50 U.S. states. It remains to be seen, however, whether this deal is part of a larger trend.

As the burden of compliance for government contractors continues to grow, private equity funds may expect to see opportunities among unique, cutting-edge companies that help both government agencies and contractors stay ahead of the latest challenges. In a constrained budget environment, however, it appears that the private equity sector is taking a targeted approach to investment, placing its bets on specific services rather than the continued growth of the government contracting industry.

PErspective in Government Contracting is a feature examining the role of private equity in the government contracting space.

Read more

SIGNIFICANT ACCOUNTING & REPORTING UPDATES

FASB Issues ASU to Add SEC Staff Announcement About Loan Costs to the Codification

The Financial Accounting Standards Board (FASB) recently issued ASU 2015-15 to codify an SEC staff announcement that entities are permitted to defer and present debt issuance costs related to line-of-credit arrangements as assets. The ASU is effective immediately. Given the absence of authoritative guidance within Update 2015-03 for debt issuance costs related to line-of-credit arrangements, ASU 2015-15 clarifies that the SEC staff would not object to an entity deferring and presenting debt issuance costs as an asset, and subsequently amortizing the deferred debt issuance costs ratably over the term of the line-of-credit arrangement. This clarification applies regardless of whether there are any outstanding borrowings on the line-of-credit arrangement. The SEC staff announcement is also effective immediately.

FASB Issues ASU to Simplify the Measurement of Inventory

As part of its ongoing simplification initiative, the FASB recently issued ASU 2015-11. The amendments require inventory within the scope of the ASU to be measured using the lower of either the inventory's cost or net realizable value. The changes apply to all types of inventory except those measured using LIFO or the retail inventory method. The new standard takes effect in 2017 for calendar year-end entities.

FASB Issues ASU to Simplify Financial Reporting by Employee Benefit Plans

The FASB recently issued ASU 2015-12, also as part of its simplification efforts. The amendments:

- Require fully benefit-responsive investment contracts to be measured, presented and disclosed only at contract value, not fair value;
- Simplify the investment disclosure requirements; and
- Provide a measurement date practical expedient for employee benefit plans.

The new standard takes effect in 2016 for calendar year-end entities.

SEC Issues Concept Release Seeking Comment on Possible Revisions to Audit Committee Disclosures

On July 1, 2015, the Securities and Exchange Commission issued Concept Release 33-9862, Possible Revisions to Audit Committee Disclosures, to seek public comment regarding audit committee reporting requirements. The release focuses on enhancing the audit committee's reporting of its process for overseeing the independent auditor.

The Concept Release is in response to views that the SEC's existing disclosure rules in this area might not have kept pace with the evolving role and responsibilities of audit committees. The rules may also have not encouraged disclosures about audit committees and their activities that are sufficient to help investors understand and evaluate audit committee performance, which may in turn inform investors' investment or voting decisions.

SEC Proposes Rules Requiring Clawback of Executive Compensation

On July 1, 2015, the Securities and Exchange Commission proposed a rule requiring national securities exchanges to establish standards for listed companies that would mandate the clawback of erroneous executive compensation, implementing provisions contained in Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These standards would force listed companies to establish and enforce policies requiring executives to pay back certain incentive-based compensation that should not have been awarded. Proposed Rule 10D-1 would substantially increase the existing requirements in Section 304 of the Sarbanes-Oxley Act, which requires CEOs and CFOs to reimburse an issuer for certain compensation when an accounting restatement resulting from misconduct occurred during the preceding 12 months. The proposed release is available here.

SEC Adopts Rule Requiring Pay Ratio Disclosures

On Aug. 5, 2015, the SEC adopted, by a 3-2 vote, a rule mandated by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The rule amends Item 402 of Regulation S-K and requires issuers to disclose the following:

- The median annual total compensation of all employees except the chief executive officer;
- The annual total compensation of the CEO; and
- The ratio of the median annual total compensation of all employees to the annual total compensation of the CEO.

These disclosures are collectively referred to as "pay ratio" disclosures and are intended to help inform shareholders when evaluating a CEO's compensation. The rule is generally consistent with the one the SEC proposed in 2013. The adopting release is available here on the SEC's website.

Further BDO highlights on accounting and reporting updates can be found here.

Read more ▶

MARK YOUR CALENDAR...

DECEMBER 2015

Dec. 8
Deltek Virtual Roundtable Series*

Dec. 14
34th Annual Government Contract Management Symposium
Washington Marriott Wardman Park
Washington, D.C.

Dec. 14-15
Federal Publications Seminar: Managing Subcontracts
Executive Conference & Training Center
Sterling, Va.

Dec. 15-16
ALM cyberSecure
The Sheraton Times Square
New York

JANUARY 2016

Jan. 25-29
NDIA Defense Systems Acquisition Management Course
Tampa Marriott Westshore
Tampa, Fla.

FEBRUARY 2016

Feb. 4-5
2016 Joint Ventures Conference
New York Marriott Downtown
New York

* indicates that BDO is attending or hosting this event

CONTACT:

CHRISTOPHER CARSON
Audit Office Managing Partner, National Government Contracting Practice Lead
703-770-6324 / ccarson@bdo.com

ERIC SOBOTA
Partner In Charge, Government Contracts and Grants Advisory Services
703-770-6395 / esobota@bdo.com

JOE BURKE
Partner, Transaction Advisory Services
703-770-6323 / jburke@bdo.com

STEPHEN RITCHEY
Audit Partner
703-770-6346 / sritchey@bdo.com

JEFF SCHRAGG
Tax Partner
703-770-6313 / jschragg@bdo.com

JOHN VAN METER
Managing Director, Government Contracting Advisory Services
703-893-0600 / jvanmeter@bdo.com

ANDREA WILSON
Managing Director, Grants Advisory Services
703-752-2784 / aewilson@bdo.com

ABOUT BDO USA

BDO is the brand name for BDO USA, LLP, a U.S. professional services firm providing assurance, tax, financial advisory and consulting services to a wide range of publicly traded and privately held companies. For more than 100 years, BDO has provided quality service through the active involvement of experienced and committed professionals. The firm serves clients through 63 offices and more than 450 independent alliance firm locations nationwide. As an independent Member Firm of BDO International Limited, BDO serves multi-national clients through a global network of 1,328 offices in 152 countries.

BDO USA, LLP, a Delaware limited liability partnership, is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms. For more information please visit: www.bdo.com.

People who know Government Contracting, know BDO.