Panoptic Enterprises'

FEDERAL CONTRACTS PERSPECTIVE

Federal Acquisition Developments, Guidance, and Opinions

Vol. XVIII, No. 1 **January 2017**

2017 DEFENSE AUTHORIZATION ACT INCREASES MICRO-PURCHASE THRESHOLD, EXTENDS SBIR/STTR

On December 23, President Obama signed into law the $611 billion National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328). While Title VIII, Acquisition Policy, Acquisition Management, and Related Matters (Sections 801-899A), contains the sections that are usually the significant ones for the defense and civilian acquisition communities, a few snuck out of Title VIII and are found in other titles (Title II, Research, Development, Test, and Evaluation; and Title XVIII, Matters Relating to Small Business Procurement).

CONTENTS

■ **Section 217, Increased Micro-Purchase Threshold for Research Programs and Entities:** This increases the micro-purchase threshold from $3,500 to $10,000 for Department of Defense (DOD) science and technology reinvention laboratories, institutions of higher education, related or affiliated nonprofit entities, nonprofit research organizations, and independent research institutes.

■ **Section 813, Use of Lowest Price Technically Acceptable Source Selection Process:** This establishes policy that the DOD avoid using lowest price technically acceptable (LPTA) source selection criteria in circumstances that would deny DOD the benefits of cost and technical tradeoffs in the source selection process. It goes on to state that the lowest price technically acceptable (LPTA) source selection process is to be avoided, to the maximum extent practicable, in the acquisition of "(1) information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, or other knowledge-based professional services; (2) personal protective equipment; or (3) knowledge-based training or logistics services in contingency operations or other operations outside the United States, including in Afghanistan or Iraq."

■ **Section 820, Defense Cost Accounting Standards:** This establishes a Defense Cost Accounting Standards Board, which is to review cost accounting standards and recommend changes to the Cost Accounting Standards Board; has the authority to implement such cost accounting standards to achieve uniformity and consistency in the standards governing measurement, assignment, and allocation of costs to contracts with DOD; and is to develop

standards to ensure that commercial operations performed by DOD employees adhere to cost accounting standards or Generally Accepted Accounting Principles that inform managerial decisionmaking.

■ **Section 821, Increased Micro-Purchase Threshold Applicable to Department of Defense Procurements:** This increases the micro-purchase threshold for DOD acquisitions from $3,500 to $5,000.

■ **Section 825, Exception to Requirement to Include Cost or Price to the Government as a Factor in the Evaluation of Proposals for Certain Multiple-Award Task or Delivery Order Contracts:** This provides that if the head of the agency issues a solicitation for multiple task or delivery order contracts for the same or similar services, and intends to award a contract to each qualifying offeror, cost or price need not be considered an evaluation factor for the contract award. However, this does *not* apply to multiple task or delivery order contracts if the solicitation provides for sole source task or delivery order contracts under Section 8(a) of the Small Business Act.

■ **Section 826, Extension of Program for Comprehensive Small Business Contracting Plans:** This extends the test program for the negotiation of comprehensive small business subcontracting plans on a corporate, division, or plant-wide basis from December 31, 2017, to December 31, 2027.

■ **Section 829, Preference for Fixed-Price Contracts:** This requires that the Defense Federal Acquisition Regulation Supplement (DFARS) be amended to establish a preference for fixed-price contracts, including fixed-price incentive fee contracts, in the determination of contract type. In addition, it requires that a cost-type contract in excess of $50,000,000 for contracts entered into on or after October 1, 2018, and before October 1, 2019, and a cost-type contract in excess of $25,000,000 for contracts entered into on or after October 1, 2019, be approved by the service acquisition executive of the military department concerned, the head of the defense agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition, Technology, and Logistics (as applicable).

■ **Section 871, Market Research for Determination of Price Reasonableness in Acquisition of Commercial Items:** This requires DOD procurement officials to conduct or obtain market research to support the determination of the price reasonableness for commercial items contained in any bid or offer.

■ **Section 874, Inapplicability of Certain Laws and Regulations to the Acquisition of Commercial Items and Commercially Available Off-the-Shelf Items:** This requires that the DFARS be amended to include lists of defense-unique statutes that are inapplicable to contracts for commercial items, subcontracts for commercial items, and contracts for commercially available off-the-shelf items.

Vivina McVay, Editor-in Chief

The ***Federal Contracts Perspective*** is published monthly by Panoptic Enterprises, P.O. Box 11220, Burke, VA 22009-1220.

■ **Section 876, Preference for Commercial Services:** This prohibits entering into contracts above the simplified acquisition threshold ($150,000) and below $10,000,000 for facilities-related services, knowledge-based services (except engineering services), construction services, medical services, or transportation services that are not commercial services unless the contracting officer determines that no commercial services are suitable to meet the agency's needs. For contracts above $10,000,000, the service acquisition executive of the military department concerned, the head of the defense agency concerned, the commander of the combatant command concerned, or the Under Secretary of Defense for Acquisition, Technology, and Logistics (as applicable) must make this determination.

■ **Section 877, Treatment of Commingled Items Purchased by Contractors as Commercial Items:** This provides that items valued at less than $10,000 that are purchased by a contractor for use in the performance of multiple contracts with the DOD and other parties and are not identifiable to any particular contract are to be treated as commercial items.

■ **Section 1834, Extension of the Small Business Innovation Research (SBIR) Program and the Small Business Technology Transfer (STTR) Programs:** This extends the expiration of the SBIR and STTR programs from September 30, 2017, to September 30, 2022.

FAC 2005-93 PUTS FAC 2005-90 FAIR PAY RULE ON HOLD

In response to the preliminary injunction issued by the District Court for the Eastern District of Texas suspending implementation of the parts of Executive Order (EO) 13673, Fair Pay and Safe Workplaces, and its corresponding changes to the Federal Acquisition Regulation (FAR) in Federal Acquisition Circular (FAC) 2005-90 that impose new reporting requirements regarding labor law violations. FAC 2005-93 includes a rule that suspends the changes made by FAC 2005-90 to FAR subpart 9.1, Responsible Prospective Contractors; FAR 17.207, Exercise of Options; FAR part 22, Application of Labor Laws to Government Acquisitions; FAR subpart 42.15, Contractor Performance Information; FAR 52.204-8, Annual Representations and Certifications; FAR 52.212-3, Offeror Representations and Certifications – Commercial Items; FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items; FAR 52.222-57, Representation Regarding Compliance with Labor Laws (Executive Order 13673); FAR 52.222-58, Subcontractor Responsibility Matters Regarding Compliance with Labor Laws (Executive Order 13673); FAR 52.222-59, Compliance with Labor Laws (Executive Order 13673); FAR 52.222-60, Paycheck Transparency (Executive Order 13673); FAR 52.222-61, Arbitration of Contractor Employee Claims (Executive Order 13673); and FAR 52.244-6, Subcontracts for Commercial Items.

The FAC 2005-93 rule adds the following note to each paragraph changed by FAC 2005-90 that addresses fair pay and safe workplaces: "Note to paragraph _____: By a court order issued on October 24, 2016, this paragraph ____ is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, DOD, GSA, and NASA will publish a document in the ***Federal Register*** advising the public of the termination of the injunction."

For more on EO 13673, see the September 2014 ***Federal Contracts Perspective*** article "Obama Issues Order Requiring That Contractors Provide 'Fair Pay and Safe Workplaces'." For

more on FAC 2005-90, see the September 2016 ***Federal Contracts Perspective*** article "FAC 2005-90 Establishes 'Fair Pay and Safe Workplaces' Representation." For more on the preliminary injunction, see the November 2016 ***Federal Contracts Perspective*** article "Executive Order 13673, Fair Pay and Safe Workplaces, Put on Hold by Court."

EDITOR'S NOTE: The FAC 2005-90 fair pay rule also implements the requirements in Section 5 of the EO, which addresses paycheck transparency. Section 5(a) of the EO requires contractors and subcontractors to provide wage statements to covered workers, giving them information on the hours they worked, overtime hours pay, and any additions to or deductions made from their pay. Section 5(b) requires contractors and subcontractors to provide a document to individuals performing work as independent contractors informing them of their status as independent contractors. These requirements are implemented in FAR 22.2005, Paycheck Transparency, and FAR 52.222-60. The court order does not prohibit the implementation of Section 5, stating "the court does not find that plaintiffs have established a substantial likelihood of success on their claims regarding the 'paycheck transparency requirement' and have failed to establish that they will suffer irreparable harm as to the implementation of those provisions… Therefore, the court declines to enjoin enforcement of the paycheck provisions." So the paycheck transparency language in FAR 22.2005, FAR 52.222-60, and added elsewhere in the FAR by the FAC 2005-90 final rule take effect January 1, 2017.

In addition to the suspension of FAC 2005-90, FAC 2005-93 includes an interim rule amending the FAR to conform to the Department of Labor (DOL) rule implementing EO 13706, Establishing Paid Sick Leave for Federal Contractors, which requires federal contractors and subcontractors to provide their employees with up to seven days of paid sick leave annually, including paid leave allowing for family care (for more on EO 13706, see the October 2015 ***Federal Contracts Perspective*** article "President Orders Paid Sick Leave for Employees of Federal Contractors"; for more on the DOL implementation of EO 13706, see the October 2016 ***Federal Contracts Perspective*** article "Labor Finalizes Rule on Contractors' Paid Sick Leave").

This interim rule adds FAR subpart 22.21, Establishing Paid Sick Leave for Federal Contractors, and FAR 52.222-62, Paid Sick Leave Under Executive Order 13706. The significant portions of the interim rule are:

■ FAR 22.2103, Applicability, which states that FAR subpart 22.21 applies to contracts that are covered by the Service Contract Labor Standards statute (formerly called the "Service Contract Act," see FAR subpart 22.10) or the Wage Rate Requirements (Construction) statute (formerly called the "Davis-Bacon Act," see FAR subpart 22.4), and are performed in whole or in part in the United States. Note that contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the federal government that are subject to the Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000 statute (formerly the "Walsh-Healey Public Contracts Act," see FAR subpart 22.6) are not covered.

■ FAR 22.2104, Exclusions, excludes from FAR subpart 22.21 coverage "employees performing in connection with contracts covered by the EO for less than 20 percent of their work hours in a given workweek. This exclusion is inapplicable to employees performing on contracts covered by the EO, *i.e.*, those employees directly engaged in performing the specific work called for by the contract, at any point during the workweek." In addition, it excludes employees covered by a collective bargaining agreement until January 1, 2020. Finally, it states that a

unilateral exercise of a pre-negotiated option to renew an existing contract that does not contain FAR 52.222-62 will not automatically trigger the application of the clause.

■ FAR 22.2105, Paid Sick Leave for Federal Contractors and Subcontractors, provides the following paid sick leave requirements: (1) contractors are required to permit an employee to accrue not less than one hour of paid sick leave for every 30 hours worked; (2) contractors may limit the amount of paid sick leave employees are permitted to accrue to not less than 56 hours in each accrual year; (3) contractors are *not* required pay an employee for accrued paid sick leave that has not been used upon a separation from employment; (4) contractors are required to permit an employee to use any or all of his or her available paid sick leave upon the request of the employee; and (5) if the employee is absent for three or more consecutive work days, the contractor may require certification issued by a health care provider verifying the need for paid sick leave for physical or mental illness, injury, or medical condition of the employee; obtaining diagnosis, care, or preventive care from a health care provider by the employee; caring for the employee's child, parent, spouse, domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions or needs for diagnosis, care, or preventive care; or domestic violence, sexual assault, or stalking, if the time absent from work is to obtain counseling, seek relocation, seek assistance from a victim services organization, take related legal action, or assist an individual related to the employee in engaging in any of these activities.

■ FAR 22.2106, Prohibited Acts, states that the following acts are prohibited: (1) interference with an employee's accrual or use of paid sick leave; (2) discharging or discriminating against any employee for: using, or attempting to use, paid sick leave; filing a complaint, initiating any proceeding, or otherwise asserting any right or claim; cooperating in any investigation or testifying in any proceeding; or informing any other person about his or her rights under EO 13706 or the DOL rule; or (3) fail to make and maintain records for inspection, copying, and transcription by the Department of Labor.

■ FAR 22.2107, Waiver of Rights, states that employees cannot waive, nor may contractors induce employees to waive, their rights under EO 13706 or the DOL rule.

■ FAR 22.2109, Enforcement of Executive Order 13706 Paid Sick Leave Requirements, provides information on enforcement authority, filing complaints, reporting and investigating complaints, remedies and sanctions (up to and including contract termination and debarment), and retroactive inclusion of FAR 52.222-62 when an agency fails to include the clause in a contract to which EO 13706 applies.

■ FAR 52.222-62, which is required to be included in contracts that include FAR 52.222-6, Construction Wage Rate Requirements, or FAR 52.222-41, Service Contract Labor Standards, and performance is in whole or in part in the United States, is based on the contract clause provided in Appendix A of the DOL rule. It reiterates the provisions of FAR subpart 22.21. It requires that the contractor include the clause in all covered subcontracts.

Comments on this interim rule must be submitted no later than February 14, 2017, identified as "FAC 2005-93, FAR Case 2017-001," by either of the following methods: (1) the Federal

eRulemaking Portal: **http://www.regulations.gov**; or (2) mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW, 2nd floor, Washington, DC 20405.

FAC 2005-94 ADDRESSES SUBCONTRACTOR PAYMENTS, PRIVACY

Four days after the issuance of FAC 2005-93 (see the above article), the FAR Council issued FAC 2005-94, which addresses late or reduced payments to small business subcontractors, and training for employees who require access to a government system of records or handle personally identifiable information (PII).

■ **Payment of Subcontractors:** This finalizes, with changes, the rule that proposed to amend FAR subpart 42.15, Contractor Performance Information, and add FAR 52.242-5, Payments to Small Business Subcontractors, to implement Section 1334 of the Small Business Jobs Act of 2010 (Public Law 111-240) and the Small Business Administration's (SBA's) implementation of Section 1334. Section 1334 requires the prime contractor to self-report to the contracting officer when the prime contractor makes late or reduced payments to small business subcontractors. In addition, Section 1334 requires the contracting officer to record the identity of contractors with a history of late or reduced payments to small business subcontractors in the Federal Awardee Performance and Integrity Information System (FAPIIS) (**https://www.fapiis.gov/**). (**EDITOR'S NOTE:** For more on Public Law 111-240, see the October 2010 ***Federal Contracts Perspective*** article "Parity Among Small Business Programs Mandated by Statute." For more on SBA's implementation of Section 1334, see the August 2013 ***Federal Contracts Perspective*** article "SBA Amends Small Business Subcontracting Rules.")

Seven respondents submitted comments on the proposed rule, and the following changes are made to the final rule:

- Paragraph (g)(2)(ii) of FAR 42.1502, Policy, is amended to add the following examples of payment and nonpayment situations that are not considered to be unjustified: "(A) there is a contract dispute on performance; (B) a partial payment is made for amounts not in dispute; (C) a payment is reduced due to past overpayments; (D) there is an administrative mistake; [and] (E) late performance by the subcontractor leads to later payment by the prime contractor."

- FAR 52.242-5(b) is amended to provide a 14-day period in which the prime contractor is required to report to the contracting officer that it made an untimely or reduced payment to a small business subcontractor.

- To clarify that FAR 52.242-5 applies to contracts for commercial items, FAR 52.242–5 is added to paragraph (b) of FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items.

For more on the proposed rule, see the February 2016 ***Federal Contracts Perspective*** article "Two Changes Proposed to the FAR."

■ **Privacy Training:** This finalizes, with changes, the rule that proposed to add FAR subpart 24.3, Privacy Training, and FAR 52.224-3, Privacy Training, to require that contractors: (1) identify employees who require access to a government system of records, handle PII, or design, develop, maintain, or operate a system of records on behalf of the federal government; (2) provide privacy training to those employees upon contract award and at least annually after that; and (3) flow-down these requirements to all covered subcontracts.

Fifteen respondents submitted comments on the proposed rule, and the following changes are made to the final rule:

- FAR 24.301, Privacy Training, is revised to allow the contractor flexibility to utilize privacy training from any source that meets the minimum content requirements unless the agency specifies in the contract that only agency-provided training is acceptable. The proposed FAR 24.301 would have required the agency to provide the contractor with the privacy training materials unless, on an exception basis, the contracting officer authorized the contractor to provide its own privacy training materials.

  Likewise, the proposed FAR 52.224-3 would have had two alternate versions: Alternate I would have been used when the contracting officer elected to have the contractor provide its own privacy training materials; and Alternate II would have been used when the agency elected to provide privacy training to contractor employees. In the final FAR 52.224-3 the proposed Alternate I is removed and the proposed Alternate II is now Alternate I.

- The applicability of the rule to commercial items and acquisitions below the simplified acquisition threshold ($150,000) is clarified with the modification of FAR 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders – Commercial Items, FAR 52.213-4, Terms and Conditions – Simplified Acquisitions (Other Than Commercial Items), and FAR 52.244-6, Subcontracts for Commercial Items, to add FAR 52.224-3 as a mandatory clause if the contractor's or subcontractor's employees will have access to a system of records.

- A number of clarifications addressing the substance of the minimal privacy training requirements have been made to the final rule to make it consistent with Office of Management and Budget (OMB) Circular A-130, Managing Federal Information as a Strategic Resource, which was revised in 2016 (see the August 2016 ***Federal Contracts Perspective*** article "OMB Issues Circular A-130 Revision"):

  - FAR 24.101, Definitions, is amended to add a definition of PII: "Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. (See Office of Management and Budget (OMB) Circular No. A-130, Managing Federal Information as a Strategic Resource)."

  - FAR 24.301(b) is amended to add that "privacy training shall address the key elements necessary for ensuring the safeguarding of personally identifiable information or a system of records. The training shall be role-based, provide

foundational as well as more advanced levels of training, and have measures in place to test the knowledge level of users."

For more on the proposed rule, see the November 2011 ***Federal Contracts Perspective*** article "Proposed FAR Rule Would Require Privacy Training."

DOD CLEANS HOUSE FOR NEW ADMINISTRATION

As the Department of Defense (DOD) prepares for the new secretaries, assistant secretaries, deputy assistant secretaries, and others taking over for the Trump administration, DOD conducted some housecleaning by finalizing a proposed rule, issuing a final rule recognizing Estonia as a "qualifying country," a proposed rule that would implement a section of last year's National Defense Authorization Act (NDAA), a class deviation clarifying an earlier final rule, and a memorandum providing guidance on the evaluation of risk when negotiating contract profit or fee.

■ **Contract Financing:** This finalizes, without changes, the rule that proposed to add DFARS subpart 232.1, Non-Commercial Item Purchase Financing, consisting of DFARS 232.104, Providing Contract Financing, which would state: "For fixed-price contracts with a period of performance in excess of a year that meet the dollar thresholds established in FAR 32.104(d), and for solicitations expected to result in such contracts, in lieu of the requirement at FAR 32.104(d)(1)(ii) for the contractor to demonstrate actual financial need or the unavailability of private financing, DOD has determined that: (1) the use of customary contract financing (see FAR 32.113 [Customary Contract Financing]), other than loan guarantees and advance payments, is in DOD's best interest; and (2) further justification of its use in individual acquisitions is unnecessary." (**NOTE:** The dollar thresholds in FAR 32.104(d) are the simplified acquisition threshold [$150,000] for small businesses, and $2,500,000 for all others.)

DOD determined that the use of such customary contract financing would provide improved cash flow as an incentive for commercial companies to do business with DOD, would be in DOD's best interest, and would require no further justification of its use.

No comments were submitted on the proposed rule, so it is finalized without changes. For more on the proposed rule, see the July 2016 ***Federal Contracts Perspective*** article "DOD on Rampage with DFARS Changes."

■ **New Qualifying Country – Estonia:** This final rule amends the following DFARS clauses to add Estonia to the list of "qualifying countries":

- DFARS 252.225-7001, Buy American and Balance of Payments Program
- DFARS 252.225-7002, Qualifying Country Sources as Subcontractors
- DFARS 252.225-7012, Preference for Certain Domestic Commodities
- DFARS 252.225-7017, Photovoltaic Devices
- DFARS 252.225-7021, Trade Agreements
- DFARS 252.225-7036, Buy American – Free Trade Agreements – Balance of Payments Program

A "qualifying country" is "a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or agreement complies, where applicable, with the requirements of Section 36 of the Arms Export Control Act (22 USC 2776) and with 10 USC 2457" (DFARS 225.003, Definitions [for foreign acquisitions]).

On September 26, 2016, the U.S. Secretary of Defense signed a reciprocal defense procurement agreement with Estonia. The agreement removes discriminatory barriers to procurements of supplies and services produced by industrial enterprises of the other country to the extent mutually beneficial and consistent with national laws, regulations, policies, and international obligations. The agreement does not cover construction or construction material. Because of the execution of these agreements, Estonia meets the criteria as "qualifying countries." (**NOTE:** Estonia is already a "designated country" under the World Trade Organization Government Procurement Agreement [see FAR 25.003, Definitions].)

■ **Competition for Religious-Related Services Contracts:** This proposed rule would add DFARS 219.270, Religious-Related Services – Inclusion of Nonprofit Organizations, DFARS subpart 237.7X, Competition for Religious-Related Services, and DFARS 252.219-70XX, Competition for Religious-Related Services, to implement Section 898 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Public Law 114-92), which states that DOD "may not preclude a nonprofit organization from competing for a contract for religious related services on a United States military installation."

To implement Section 898, the following changes are proposed to the DFARS:

- DFARS 219.270-2, Procedures, would be added, and paragraph (a) would state that when acquiring religious-related services on a U.S. military installation, nonprofit organizations may not be precluded from competing, even when a small business set-aside is used, and that none of the exceptions for other than full and open competition at FAR 6.302-5(b)(4) through (7) may be used for such procurements (the following are the exceptions: (4) sole source awards under the 8(a) program; (5) sole source awards under the HUBZone Act of 1997; (6) sole source awards under the Veterans Benefits Act of 2003; and (7) sole source awards under the Women-Owned Small Business Program). In addition, paragraph (b) states that if an apparently successful offeror has not represented in its offer that it is a small business concern of a type that meets set-aside requirements of the solicitation, then the contracting officer shall verify that the offeror is registered in the System for Award Management (SAM) database (**https://www.sam.gov/**) as a nonprofit organization.

- DFARS subpart 237.7X would implement the requirements of Section 898 for the covered services. Specifically, paragraph (a) of DFARS 237.7X02, Policy, would provide that a nonprofit organization may not be precluded from competing for contracts for religious-related services on a U.S. military installation. In addition, DFARS 237.7X02(b) would cross-reference DFARS 219.270 to direct contracting officers to guidance on the treatment of set-asides for small business concerns.

– DFARS 252.219-70XX would be required for solicitations of religious-related services on a U.S. military installation that will be set-aside for one of the small business programs identified at paragraph (a)(3) of FAR 19.000, Scope of Part (that is, small business, 8(a) business development participants, HUBZone small businesses, service-disabled veteran-owned small businesses, women-owned small businesses [WOSB], and economically disadvantaged women-owned small businesses [EDWOSB] concerns). DFARS 252.219-70XX(b) puts offerors on notice that a nonprofit organization will not be precluded from competing for award, and paragraph (c) advises nonprofit organizations that the contracting officer will verify that it is registered as a nonprofit organization in SAM before considering it for award. (Conforming changes would be made to paragraph (f)(vii) of DFARS 212.301, Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items, to ensure DFARS 252.219-70XX is used in commercial acquisitions.)

In addition, a new paragraph (b) would be added to DFARS 213.7001, Procedures [for simplified acquisitions under the 8(a) program] to direct contracting officers not to use the sole source authority at FAR 6.302-5(b)(4) (that is, the 8(a) program authority) and not to exclude nonprofit organizations from participating in competitive procurements under the 8(a) program (the current paragraph would be redesignated as paragraph (a)(2)).

Comments on this proposed rule must be submitted no later than February 21, 2017, identified as "DFARS Case 2016-D015," by any of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; (2) email: **osd.dfars@mail.mil**; (3) fax: 571-372-6094; or (4) mail: Defense Acquisition Regulations System, Attn: Lee Renna, OUSD (AT&L)DPAP/ DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

EDITOR'S NOTE: This proposed rule would supersede Class Deviation 2016-O0010, Competition for Religious-Related Services, which was issued to implement Section 898 until the DFARS is amended. For more on the class deviation, see the November 2016 ***Federal Contracts Perspective*** article "DOD Finalizes Network Penetration Reporting Rule."

■ **Class Deviation on Enhancing the Effectiveness of Independent Research and Development (IR&D):** This class deviation provides substitute language to paragraph (c)(iii)(C)(*4*)(*i*) of DFARS 231.205-18, Independent Research and Development and Bid and Proposal Costs to "alleviate the requirement that the technical interchanges occur before costs are generated for IR&D projects initiated in the contractor's fiscal year 2017…"

DFARS 231.205-18(c)(iii)(C)(*4*) states: "For IR&D projects initiated in the contractor's fiscal year 2017 and later, as a prerequisite for the subsequent determination of allowability, the contractor shall: (*i*) engage in a technical interchange with a technical or operational DOD government employee before IR&D costs are generated so that contractor plans and goals for IR&D projects benefit from the awareness of and feedback by a DOD government employee who is informed of related ongoing and future potential interest opportunities…" This class deviation substitutes "sometime during the contractor's fiscal year 2017" for "before IR&D costs are generated." The class deviation's version is: "For IR&D projects initiated in the contractor's fiscal year 2017 and later, as a prerequisite for the subsequent determination of allowability, the contractor shall: (*i*) engage in a technical interchange with a technical or operational DOD government employee *sometime during the contractor's fiscal year 2017* so that contractor plans and goals for IR&D projects benefit from the awareness of and feedback by a DOD government

employee who is informed of related ongoing and future potential interest opportunities…" (*emphasis* added).

This class deviation will remain in effect until it is either incorporated in the DFARS or rescinded.

EDITOR'S NOTE: This class deviation amends one of the changes made by a final rule issued in November 2016 that revised DFARS 231.205-18(c)(iii)(C). For more on that final rule, see the December 2016 ***Federal Contracts Perspective*** article "DOD Issues Three Final Rules in November."

■ **Guidance on Evaluation of Risk in Negotiating Contract Profit or Fee:** This memorandum from Claire Grady, Director of Defense Procurement and Acquisition Policy, to the services' deputy assistant secretaries for contracting is intended to reinforce policy to evaluate performance and contract type risk using the DOD Weighted Guidelines in DFARS 215.404-71, Weighted Guidelines Method.

"The DOD Inspector General (IG) has performed several audits related to profit paid to prime contractors for work performed by a DOD depot (organic) workforce as a subcontractor," writes Ms. Grady. "The DODIG found that contracting officers were not adequately assessing the costs associated with DOD depot performed work at lower risk and in turn were not negotiating reduced profit and fees…Contracting officers should consider the impact of the prime contractor's management/cost control efforts and the risk the contractor is assuming in the performance of the specific contract actions contemplated…When the contract includes terms and conditions that are more favorable to a prime contractor, such as permitting the prime contractor to submit a request for equitable adjustment in the event of non-performance by the DOD workforce, that should be factored into the analysis regarding the appropriate amount of fee or profit to be negotiated. Profit or fee is an important aspect of contractor compensation and should fairly reflect the contractor's degree of risk in fulfilling contract requirements."

MULTIPLE-AWARD CONTRACT SET-ASIDES TO BE REVISED

The FAR Council has published a proposed rule that would implement regulatory changes made by the Small Business Administration (SBA) that provide government-wide policy for partial set-asides and reserves, and setting aside orders for small business concerns under multiple-award contracts.

Section 1331 of the Small Business Jobs Act of 2010 (Public Law 111-240 – see the October 2010 ***Federal Contracts Perspective*** article "Parity Among Small Business Programs Mandated by Statute") provided authority for three acquisition techniques to facilitate contracting with small businesses on multiple-award contracts: (1) setting aside part or parts of the requirement for small businesses; (2) reserving one or more contract awards for small business concerns under full and open multiple-award procurements; and (3) setting aside orders placed against multiple-award contracts, "notwithstanding the fair opportunity requirements" (see paragraph (b)(1) of FAR 16.505, Ordering [under indefinite-delivery contracts], which states "the contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding $3,500 issued under multiple delivery-order contracts or multiple task-order contracts…").

FAC 2005-54 included an interim rule that provided federal agencies with guidance they could use to implement Section 1331 while SBA completed the drafting and coordination of a rule that would provide more specific guidance (see the December 2011 ***Federal Contracts Perspective*** article "FAC 2005-54 Permits Small Business Set-Asides For Multiple-Award Contracts").

SBA eventually issued its final regulations implementing Section 1331 in 2013 (see the November 2013 ***Federal Contracts Perspective*** article "SBA Issues Rules for Setting Aside Task Order Contracts, Contract Consolidation, and Bundling").

This proposed rule is based on the SBA's regulations and comments on the FAC 2005-54 interim rule (though many of the comments on the interim rule were rendered moot with the issuance of the SBA regulations). The primary revisions are in FAR subpart 19.5, Set-Asides for Small Business, which this proposed rule would rename "Small Business Total Set-Asides, Partial Set-Asides, and Reserves":

■ Because FAR 19.502-3, Partial Set-Asides, already exists, and Section 1331 addresses partial set-asides under multiple-award contracts, FAR 19.502-3 would be retitled "Partial Set-Asides of Contracts Other than Multiple-Award Contracts," and FAR 19.502-4, Multiple-Award Contracts and Small Business Set-Asides, would be retitled "Partial Set-Asides of Multiple-Award Contracts" and revised to expand on the current guidance and improve the overall process. FAR 52.219-7, Notice of Partial Small Business Set-Aside, would be amended to replace the existing, cumbersome procedures for awarding contracts under the set-aside and non-set-aside portions with a new, more simplified approach – small businesses wishing to participate on the partial set-aside portion of the acquisition would no longer be required to submit offers on the non-set-aside portion. Finally, new language would be added to clarify the requirements for issuing orders against the set-aside and non-set-aside portions of multiple-award contracts.

■ FAR 19.503, Reserves, would be added (current FAR 19.503 through FAR 19.507 would be redesignated as FAR 19.502-6 through FAR 19.502-10). It would include substantial coverage for the new concept of a "reserve." A reserve would be used in solicitations for multiple-award contracts when a total or a partial set-aside of the work is not feasible but the agency wants to be sure that small businesses participate at the prime contract level. A new clause, FAR 52.219-XX, Notice of Small Business Reserve, would be added, too.

■ FAR 19.504, Setting Aside Orders Under Multiple-Award Contracts (currently "Size Standards"), would be added to provide several new methodologies: (1) orders under partial set-asides; (2) orders under reserves; and (3) orders under full and open competition.

Also, the proposed rule would provide new guidance for assigning North American Industry Classification System (NAICS) codes in solicitations that will result in multiple-award contracts. FAR 19.102, Small Business Size Standards and North American Industry Classification System Codes, would give contracting officers the discretion to: (1) assign one NAICS code (and corresponding size standard) to the entire solicitation; or (2) when the procurement can be divided into portions or categories, assign each a NAICS code and corresponding size standard that best describes the principal purpose attributed to the part or category.

In addition, the limitations on subcontracting and the nonmanufacturer rule would be consolidated in FAR 19.505, Performance of Work. Limitations on subcontracting are the

minimum percentages of work the prime small business contractor must itself perform under a contract awarded through a set-aside. The nonmanufacturer rule requires a concern that proposes to furnish a product it did not manufacture or produce under a small business set-aside to have fewer than 500 employees and provide the product of a small business manufacturer. A new clause FAR 52.219-YY, Nonmanufacturer Rule, would be added.

Finally, changes would be made throughout the FAR to reflect these changes and the SBA's revised regulations, particularly in FAR subpart 16.5, Indefinite-Delivery Contracts; FAR subpart 19.3, Representations and Rerepresentations; FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program); FAR subpart 19.13, Historically Underutilized Business Zone (HUBZone) Program; FAR subpart 19.14, Service-Disabled Veteran-Owned Small Business Procurement Program; and FAR subpart 19.15, Women-Owned Small Business (WOSB) Program.

Comments on this proposed rule must be submitted no later than January 30, 2017, identified as "FAR Case 2014-002," by either of the following methods: (1) the Federal eRulemaking Portal: **http://www.regulations.gov**; or (2) mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW, 2nd floor, Washington, DC 20405.

NASA ADDS FINANCIAL REPORTING OF PROPERTY REQUIREMENT

The National Aeronautics and Space Administration (NASA) issued two final rules amending the NASA FAR Supplement (NFS) and one proposed rule during December.

■ **Contractor Financial Reporting of Property:** This final rule amends NASA FAR Supplement (NFS) 1852.245-73, Financial Reporting of NASA Property in the Custody of Contractors, to add a monthly reporting requirement for contracts in which the contractor has custody of NASA-owned property, plant, and equipment (PP&E) valued at $10,000,000 or more to ensure contractor-held PP&E are more accurately represented in NASA financial statements.

NASA Procedural Requirement (NPR) 9250.1, Property, Plant, and Equipment and Operating Materials and Supplies, requires contractors with custody of NASA-owned PP&E to report financial property information to NASA on a yearly basis, and also requires contractors with custody of $10,000,000 or more in NASA-owned PP&E to report financial property information to NASA on a monthly basis. NFS 1852.245-73(a) requires the contractor to submit a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, annually. However, if at any time during the contract the amount of NASA property in the custody of the contractor equaled to or exceeded $10,000,000, the contracting officer had to instruct the contractor to submit the NF 1018 monthly.

To place the responsibility on the contractor, paragraph (c)(3) is added to NFS 1852.245-73, which states "if at any time during performance of the contract, NASA-owned property in the custody of the contractor has a value of $10 million or more, the contractor shall also submit a report no later than the 21st of each month…"

In addition, this final rule revises revises paragraph (c)(1) to extend the annual NF 1018 submission deadline from October 15 to October 31 to allow contractors additional time to develop and submit the report.

■ **Revised Voucher Submission & Payment Process:** This finalizes, without changes, the interim rule that added NFS 1852.232-80, Submission of Vouchers for Payment, to implement Section 893 of the NDAA for FY 2016 (Public Law 114-92), "Improved Auditing of Contracts," which prohibits the Defense Contract Audit Agency (DCAA) from performing audit work for non-Defense agencies until DCAA's backlog of incurred cost audits is below 18 months. NASA had delegated to DCAA the task of reviewing contractor requests for payment under its cost-type contracts. Since DCAA's current backlog of cost audits is greater than 18 months, DCAA has ceased cost voucher audit support to NASA.

In response to the prohibition in Section 893 and to ensure the continued prompt payment to its suppliers, NASA issued an interim rule that added NFS 1852.232-80 and required that it be included in all cost-reimbursement contracts. NFS 1852.232-80 does the following: (1) designates the NASA Shared Services Center (NSSC) at FMD Accounts Payable, Bldg. 1111, Jerry Hlass Road, Stennis Space Center, MS 39529, as the payment office; (2) requires the contractor to submit all vouchers electronically (except classified vouchers) using the steps described at NSSC's Vendor Payment information Web site at **https://www.nssc.nasa.gov/vendorpayment**; (3) requires that the vouchers include a "(i) breakdown of billed labor costs and associated contractor generated supporting documentation for billed direct labor costs to include rates used and number of hours incurred; (ii) breakdown of billed other direct costs (ODCs) and associated contractor generated supporting documentation for billed ODCs; [and] (iii) indirect rate(s) used to calculate the amount of billed indirect expenses."

In addition, the interim rule deleted NFS 1852.216-87, Submission of Vouchers for Payment, which prescribed outdated procedures, including submitting vouchers to DCAA.

No comments were submitted in response to the interim rule, so it is finalized without changes. For more on the interim rule, see the October 2016 ***Federal Contracts Perspective*** article "NASA Prohibited from Using DCAA."

■ **Award Term:** This proposed rule would add NFS 1816.405-277, Award Term, and clause NFS 1852.216-XX, Award Term, to add policy on the use of additional contract periods of performance, or "award terms," as a non-monetary contract incentive that a contractor may earn if (1) the contractor's sustained performance under a service contract is superior, (2) the government has an on-going need for the requirement, and (3) funds are available for the additional period of performance.

NFS 1816.405-277 would address the use of award term incentives as follows:

- Paragraph (a) would explain what an award term is: "An award term enables a contractor to become eligible for additional periods of performance or ordering periods under a service contract…by achieving and sustaining the prescribed performance levels under the contract. It incentivizes the contractor for maintaining superior performance by providing an opportunity for extensions of the contract term."

- Paragraphs (b) and (c) would describe when the use of award terms is appropriate: "Award terms are best suited for acquisitions where a longer term relationship (generally more than five years) between the government and a contractor would provide significant benefits to both. Motivating excellent performance, fostering contractor capital investment, and increasing the desirability of the award, thus potentially increasing competition, are benefits that may justify the use of award terms…While the

administrative burden and cost of more frequent procurements to both the government and potential offerors should be considered when determining whether to use award terms, this decision must be weighed against market stability, the potential changes and advancements in technology, and flexibility to change direction with mission changes and associated frequent procurements."

- Paragraph (d) would identify the differences between contract options and award term incentives: "FAR 17.207(c)(7) [Exercise of Options] states the contracting officer must determine that the contractor's performance has been acceptable, *e.g.*, received satisfactory ratings." In contrast, to become eligible for an award term, the contractor must maintain a level of performance *above* acceptable as specified in the award term plan (see paragraph (i)). However, a contract can have both option periods and award terms; when the contract has both, the award term period of performance or ordering period begins after completion of any option period of performance or ordering period.

- Paragraph (e) would explain how award terms are to be constructed and exercised: "Contracts with award terms shall include a base period of performance or ordering period and may include a designated number of option periods during which the government will observe and evaluate the contractor's performance allowing the contractor to earn an award term. Additionally, as specified in the award term plan, the contractor may also be evaluated for additional award terms during performance of an earned award term. If the contractor meets or exceeds the performance requirements, there is an on-going need for and desire to continue the contract, funds are available, and the contractor is not listed in the System for Award Management Exclusions [**http://www.sam.gov**], then the contractor is eligible for contract extension for the period of the award term."

- Paragraph (f) would specify that contracts with award terms are limited by other FAR and NFS restrictions: "Contracts with award terms shall comply with FAR and NFS restrictions on the overall contract length, such as the 5-year period of performance limitation found at NFS 1817.204 [Contracts]."

- Paragraph (g) would limit award terms to acquisitions for services exceeding $20,000,000, although award terms may be authorized for lower-valued acquisitions in exceptional situations, such as for contract requirements having direct health or safety impacts.

- Paragraph (i) would specify the required elements of an award term plan and require that the plan be incorporated into the contract.

- Paragraph (j) would establish the government's unilateral right not to grant or to cancel award terms, and identify the conditions under which this may occur.

NFS 1852.216-XX would inform the contractor of the conditions for earning an award term and that, even if the contractor meets the standards of eligibility for an award term, the government may not grant the award term or cancel the award term under the conditions that are listed.

Comments on this proposed rule must be submitted by February 7, 2017, identified as "NFS Case 2016-N027," by any of the following methods: (1) the Federal eRulemaking Portal:

http://www.regulations.gov; (2) email: **marilyn.chambers@nasa.gov**; (3) fax: 202-358-3082; or (4) mail: National Aeronautics and Space Administration, Headquarters, Office of Procurement, Contract and Grant Policy Division, Attn: Marilyn E. Chambers, LP-011, 300 E Street SW, Washington, DC 20546-0001.

SBA ALLOWS CREDIT FOR LOWER TIER SUBCONTRACTING

The Small Business Administration (SBA) is amending its regulations to give a prime contractor credit towards its subcontracting plan goals for awards made to small business concerns at any tier under the contract.

When a prime contractor awards a subcontract to a firm that firm is generally considered a first tier subcontractor. That subcontractor may award a subcontract, which would be considered a second tier subcontract, and so on. However, until this final rule, a prime contractor could not receive credit towards its small business subcontracting plan goals for awards made below the first tier (with a few exceptions).

Section 1614 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 (Public Law 113-66) amended the Small Business Act to provide that where a prime contractor has a subcontracting plan for a specific prime contract with an agency, the prime contractor will receive credit towards its subcontracting plan goals for awards made to small business concerns at any tier under the contract. However, the prime contractor can only take credit for awards by large business subcontractors with subcontracting plans to lower-tier small business subcontractors because only those large business subcontractors are required to report awards to small business subcontractors and the consequent attainment of their small business subcontracting goals. (**EDITOR'S NOTE:** The requirement to provide a subcontracting plan does *not* apply to small businesses or to contracts less than $700,000 [$1,500,000 for construction].)

The following are the significant changes being made by SBA to its regulations in Title 13 of the Code of Federal Regulations, Part 121, Small Business Size Standards, and Part 125, Government Contracting Programs, to implement Section 1614:

■ Paragraph (b) of Section 121.411, What are the size procedures for SBA's Section 8(d) Subcontracting Program?, is amended to make clear that prime contractors and subcontractors may rely on "a subcontractor's electronic self-certification as to size or socioeconomic status, if the solicitation for the subcontract contains a clause which provides that the subcontractor verifies by submission of the offer that the size or socioeconomic representations and certifications are accurate and complete." (**EDITOR'S NOTE:** Similar language is added to paragraph (c)(1)(v) of Section 125.3, What types of subcontracting assistance are available to small businesses?)

■ Section 125.3(a)(1)(i)(C) is added: "Where the prime contractor has an individual subcontracting plan, the prime contractor shall establish two sets of small business subcontracting goals, one goal for the first tier and one goal for lower tier subcontracts awarded by other than small subcontractors with individual subcontracting plans…Other-than-small, lower tier subcontractors must have their own individual subcontracting plans if the subcontract is at or above the subcontracting plan threshold, and are required to make a good faith effort to

meet their subcontracting plan goals. The prime contractor and any subcontractor with a subcontracting plan are responsible for reporting on subcontracting performance under their contracts or subcontracts at their first tier." (**EDITOR'S NOTE:** Section 1614 applies only when determining whether or not a prime contractor has met its *individual* subcontracting plan goals. Thus, Section 1614 and the SBA regulations do *not* apply when the prime contractor has a subcontracting plan that covers multiple contracts, such as a commercial plan or a comprehensive subcontracting plan.)

■ Section 125.3(c)(1)(v) is revised to require the contractor to "assign to each subcontract, and to each solicitation, if a solicitation is utilized, the NAICS [North American Industry Classification System] code and corresponding size standard that best describes the principal purpose of the subcontract…" This will keep the contractor from simply passing down the NAICS assigned to the prime contract to all its subcontracts.

■ Section 125.3(c)(1)(x) is added. It requires prime contractors and subcontractors with subcontracting plans to do various tasks in connection with their subcontractors with subcontracting plans: "subcontractors required to maintain subcontracting plans…will review and approve subcontracting plans submitted by their subcontractors; monitor their subcontractors' compliance with their approved subcontracting plans; ensure that subcontracting reports are submitted by their subcontractors when required; acknowledge receipt of their subcontractors' reports; compare the performance of their subcontractors to their subcontracting plans and goals; and discuss performance with their subcontractors when necessary to ensure their subcontractors make a good-faith effort to comply with their subcontracting plans…"

■ Section 125.3(c)(1)(xi) is added. It incorporates new requirements from Section 1614 concerning the records the prime contractor must maintain to demonstrate subcontractors at all tiers comply with the subcontracting plan requirements: "The prime contractor must provide a written statement of the types of records it will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the subcontracting plan…, including the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; the efforts to identify and award subcontracts to such small business concerns; and size or socioeconomic certifications or representations received in connection with each subcontract."

MILEAGE REIMBURSEMENT SET AT 53.5¢/MILE FOR AUTOS

The General Services Administration (GSA) is reducing the mileage reimbursement rate for use of a privately owned automobile on official travel from 54¢ per mile to 53.5¢ per mile, and the rate for use of a motorcycle on official travel from 51¢ per mile to 50.5¢ per mile. The rate for use of a privately owned aircraft is reduced from $1.19 per mile to $1.15 per mile. These revised rates are effective for travel performed on or after January 1, 2017, through December 31, 2017. The reduced reimbursement rates reflect lower fuel prices.

OFPP SEEKS COMMENTS ON ANTI-TRAFFICKING BEST PRACTICES

The Office of Federal Procurement Policy (OFPP) (an office within the Office of Management and Budget [OMB]) is seeking comments on a draft memorandum it has developed in coordination with the Office to Monitor and Combat Trafficking in Persons in the Department of State (DOS) and the Department of Labor (DOL) to address anti-trafficking risk management best practices and mitigation considerations. This guidance is designed to help an agency determine if a contractor is taking adequate steps to meet its anti-trafficking responsibilities under Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, and FAR subpart 22.17, Combating Trafficking in Persons. The memorandum is available at **https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2017/draft-anti_trafficking_0.pdf**. (For more on Executive Order 13627, see the October 2012 ***Federal Contracts Perspective*** article "Order Strengthens Trafficking Protections"; for more on the subsequent amendment of FAR subpart 22.17, see the February 2015 ***Federal Contracts Perspective*** article "Trafficking in Persons, Uncompensated Overtime Subjects of FAC 2005-80.")

"OMB, DOS, and DOL ('Co-Chairs') expect contractors to be proactive and forthcoming in their efforts to address and reduce the risk of human trafficking in their operations and supply chains. At the same time, OMB, DOS, and DOL recognize that not all contractors are similarly situated and some, such as those with large supply chains, may face more challenges than others in meeting their responsibilities. In addition, not all risks are equal in their impact. To this end, the Co-Chairs developed a set of best practices and mitigation considerations to help contracting officers determine if a contractor is taking adequate steps to meet its anti-trafficking responsibilities under the FAR. Also, to promote clarity and consistency in the implementation of anti-trafficking requirements, the Co-Chairs developed responses to a number of frequently asked questions posed by stakeholders following the publication of the final FAR rule.

"The Co-Chairs encourage feedback on the draft guidance. Comments are especially welcome on identified best practices and mitigating steps as well as any additional information that may be relevant to helping a contracting officer determine if an existing federal contractor who reports a trafficking incident has taken reasonable actions or if a prospective contractor is able to address trafficking challenges where the agency is planning an acquisition in an environment that is at high risk of trafficking."

Comments on the draft memorandum must be submitted no later than January 9, 2017, identified as "Proposed Memo on Anti-Trafficking," by either of the following methods: (1) email: **OFPPData@omb.eop.gov**; or (2) fax: 202-395-5105.

OMB ADJUSTS CIVIL PENALTIES FOR INFLATION

The Office of Management and Budget is adjusting civil monetary penalties, including several that are acquisition-related, to comply with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Public Law 114-74), which requires annual inflation adjustments to civil penalties.

The civil penalties are adjusted by **1.01636** to account for inflation during 2016.

The following are the adjustments made to acquisition-related civil monetary penalties:

- **Procurement Integrity Act** (violation by an individual): from $98,935/violation to $100,554/violation (see FAR 3.104, Procurement Integrity)

- **Procurement Integrity Act** (violation by an organization): from $989,345/violation to $1,005,531/violation (see FAR 3.104, Procurement Integrity)

- **False Claims Act**: from not less than $10,781/false claim or more than $21,563/false claim to not less than $10,957/false claim or more than $21,915/false claim

- **Program Fraud Civil Remedies Act**: from $10,781 and double damages/false claim to $10,957 and double damages/false claim

- **Anti-Kickback Enforcement Act:** from up to twice the amount of the kickback plus up to $21,563 for each kickback to up to twice the amount of the kickback plus up to $21,916 for each kickback made (see FAR 3.502, Subcontractor Kickbacks)

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