

# FEDERAL CONTRACTS PERSPECTIVE

Federal Acquisition Developments, Guidance, and Opinions

## GSA DETECTS FRAUDULENT ACTIVITIES IN THE SYSTEM FOR AWARD MANAGEMENT

The General Services Administration (GSA) has announced that it has discovered instances of fraud within the System for Award Management (SAM – <https://www.SAM.gov>), and it is supporting an active investigation by the GSA Office of the Inspector General (OIG) into the alleged third party fraudulent activity. “At this time, only a limited number of entities registered in SAM are suspected of being impacted by this fraudulent activity,” says GSA in its press release.

SAM is the federal database where vendors register to do business with the government. It consolidates several federal databases into one: the Federal Agency Registration (FedReg); the Online Representations and Certifications Application (ORCA); and the Excluded Parties List System (EPLS); and there are plans to consolidate even more federal databases, such as the Wage Determinations On-Line (WDOL), the Federal Procurement Data System (FPDS), and several others. The purpose of the SAM is to: (1) allow users to employ a single login to access all the capabilities found in the old systems; (2) eliminate data overlap by sharing the data among the systems; and (3) provide a standardized format across all webpages to make it easier to navigate and find information.

The fraudulent activities detected involve individuals using public information to impersonate legitimate entities and fraudulently registering those entities in SAM. By impersonating legitimate entities, these individuals have redirected payments from the government to the fraudulent entities registered in SAM. In addition, some of these illegitimate entities have won government contracts and provided non-authentic or counterfeit items.

GSA has taken steps to address this issue and has notified affected entities. These steps include requiring an original, signed notarized letter identifying the authorized Entity Administrator for the entity associated with the DUNS number before a new SAM.gov entity registration will be activated. In addition, GSA is in the process of making system modifications to prevent this and similar improper activity.

GSA has deactivated any entity registrations that appeared to have been affected – that is, those entities whose financial information has changed within the last year. These entities are being advised to validate their registration information in SAM, particularly their financial information and points of contact. This means awards or any modifications to existing awards will not be able to be made to affected entities until the re-verification is completed.

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Entities registered in SAM are advised to log into SAM and review their registration information, particularly their financial information. If an entity suspects a payment due them from a federal agency was paid to a bank account other than their own, the entity should contact the Federal Service Desk at <http://www.fsd.gov>, or by telephone at 866-606-8220 (toll free) or 334-206-7828 (internationally), Monday through Friday from 8:00 am to 8:00 pm (EDT), for free assistance.

**EDITOR’S NOTE:** Paragraph (b) of Federal Acquisition Regulation (FAR) 52.232-33, Payment by Electronic Funds Transfer – System for Award Management, states: “The government shall make payment to the contractor using the EFT [electronic funds transfer] information contained in the System for Award Management (SAM) database. In the event that the EFT information changes, the contractor shall be responsible for providing the updated information to the SAM database.” GSA maintains that “entities are responsible for ensuring that their information is current and correct in SAM in accordance with paragraph (b) of FAR clause 52.232-33, and should routinely review such information for accuracy.”

## FOURTH REVISION TO VAAR PROPOSED

The Department of Veterans Affairs (VA) is proposing the fourth increment of its effort to amend and update its VA Acquisition Regulation (VAAR) to revise or remove any policy superseded by changes in the FAR, to move procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes are intended to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements. VA will rewrite the VAAR in a series of proposed rules, with each increment revising VAAR parts that address related topics.

This is the fourth proposed rule VA has published, and it would amend VAAR part 811, Describing Agency Needs, VAAR part 832, Contract Financing, VAAR Part 870, Special Procurement Controls, and the corresponding clauses and provisions in VAAR Part 852, Solicitation Provisions and Contract Clauses, to reflect current FAR titles of parts, subparts, and sections; reflect current FAR format, numbering, and arrangement; reflect current FAR requirements and definitions; correct inconsistencies with the FAR; remove redundancies and duplicate material already covered by the FAR; and delete outdated material and information.

For more on the first proposed rule, see the April 2017 *Federal Contracts Perspective* article “Revision of VAAR to Adhere to FAR Proposed,” and for more on the finalized version of this first proposed rule, see the March 2018 *Federal Contracts Perspective* article “Phase I of VAAR Update Finalized”; for more on the second proposed rule, see the June 2017 *Federal Contracts Perspective* article “Phase Two of VAAR Revision Proposed”; and for more on the third proposed rule, see the February 2018 *Federal Contracts Perspective* article “VAAR to be Revised to Align with the FAR.”

Vivina McVay, Editor-in Chief

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The *Federal Contracts Perspective* is published monthly by Panoptic Enterprises, 6055 Ridge Ford Drive, Burke, VA 22015.

## DOD AMENDS MENTOR-PROTÉGÉ PROGRAM

The Department of Defense (DOD) is amending its mentor-protégé program to implement Section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Public Law 114–92), which extended the program to September 30, 2021; added new eligibility criteria; added limitations on a protégé firm’s participation in the program; and added new elements to mentor-protégé agreements. In addition, DOD issued technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS); a class deviation on enhanced postaward debriefing rights; a list of supplies that are to be competed when purchasing from Federal Prison Industries; and an update to contract payment instructions. Finally, DOD announced that it is providing an opportunity for the public to provide inputs on implementation of those sections of the NDAA for FY 2018 that address acquisition matters.

■ **Amendment to the Mentor-Protégé Program:** This finalizes, with editorial changes, the proposed rule that would amend DFARS subpart 219.71, Pilot Mentor-Protégé Program, and DFARS Appendix I, Policy and Procedures for the DOD Pilot Mentor-Protégé Program, to implement Section 861 of the NDAA for FY 2016 (Public Law 114-92), Amendment to Mentor-Protégé Program.

Section 861 makes the following changes to the DOD mentor-protégé program:

- Adds new reporting requirements for mentor firms to report semiannually;
- Adds new eligibility criteria;
- Limits to one the number of mentor-protégé agreements to which a protégé firm may be a party;
- Limits to five years the period during which a protégé firm may participate in mentor-protégé agreements under the program;
- Adds new elements to mentor-protégé agreements addressing the benefits of the agreement to DOD and goals for additional awards for which the protégé firm can compete outside the program;
- Removes business development assistance using mentor firm personnel and cash in exchange for an ownership interest in the protégé firm from the types of assistance that a mentor firm may provide to a protégé firm;
- Prohibits reimbursement of any fee assessed by the mentor firm for certain services provided to the protégé firm while participating in a joint venture with the protégé firm; and
- Extends the program for three years, to September 30, 2021.

To implement the changes made by Section 861 to the DOD mentor-protégé program, changes were proposed to DFARS subpart 219.71 and DFARS Appendix I (for more information on the proposed rule, see the October 2016 *Federal Contracts Perspective* article “DOD Proposes Changes to Its Mentor-Protégé Program”). One respondent submitted comments, but no changes were made to the final rule. However, DOD made the following changes to the final rule:

- The proposed definition of “nontraditional defense contractor” in I-101.2, Nontraditional Defense Contractor, which was taken directly from Section 861, is revised to reflect the

definition for this term in DFARS 212.001, Definitions [for commercial items], which was added by the January 31, 2018, final rule “Procurement of Commercial Items” (see the February 2018 *Federal Contracts Perspective* article “DOD Provides Guidance on Commercial Item Procurement”).

- Several references in Appendix I are revised to reflect that the DOD Office of Small Business Programs is now organizationally located under the Office of Acquisition and Sustainment (A&S) instead of the Office of Acquisition, Technology and Logistics (AT&L). This organizational change took effect February 1, 2018.

■ **Technical Amendments:** The following technical amendments are made to the DFARS:

- Links to a website listing ship-to locations that require passive radio frequency identification (RFID) tagging that is referenced in paragraph (a)(2) of DFARS 211.275-2, Policy [for passive radio frequency identification] and paragraph (b)(1)(ii) of DFARS 252.211-7006, Passive Radio Frequency Identification, are updated ([https://www.acq.osd.mil/log/sci/RFID\\_ship-to-locations.html](https://www.acq.osd.mil/log/sci/RFID_ship-to-locations.html)).
- In paragraph (b)(1) of DFARS 213.106-2, Evaluation of Quotations or Offers [for simplified acquisitions], and DFARS 252.213-7000, Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Past Performance Evaluations (formerly named “Notice to Prospective Suppliers on Use of Past Performance Information Retrieval System – Statistical Reporting in Past Performance Evaluations”), “Supplier Performance Risk System (SPRS)” replaces “Past Performance Information Retrieval System (PPIRS-SR),” and the links to various PPIRS websites are replaced with links to various SPRS websites (<https://www.ppirsrng.csd.disa.mil/>). (NOTE: On January 27, 2018, PPIRS-SR became known as SPRS.)
- In DFARS 242.002, Interagency Agreements, “Supply and Services Canada (SSC)” is replaced by “Public Works and Government Services Canada (PWGSC), operating as Public Services and Procurement Canada (PSPC).”
- In DFARS 245.103-74, Contracting Office Responsibilities, “PGI [Procedures, Guidance, and Information] 245.103-73” is corrected to read “PGI 245.103-74.”

■ **Class Deviation on Enhanced Postaward Debriefing Rights:** This deviation implements Section 818 of the NDAA for FY 2018 (Public Law 115–91), which requires that “a disappointed offeror [be given the opportunity] to submit, within two business days after receiving a post-award debriefing, additional questions related to the debriefing.”

When giving an unsuccessful offeror a postaward debriefing in accordance with FAR 15.506, Postaward Debriefings of Offerors, “contracting officers shall include in the debriefing information provided to unsuccessful offerors an opportunity to submit additional questions related to the debriefing within two business days after receiving the debriefing. The agency shall respond in writing to the additional questions submitted by an unsuccessful offeror within five business days after receipt of the questions.”

In addition, the deviation states that “the agency shall comply with the requirements of FAR 33.104(c) [Protests to the GAO] regarding the suspension of contract performance or termination

of the awarded contract, upon receipt of a protest filed by an unsuccessful offeror at the U.S. Government Accountability Office (GAO) within –

- Ten days after the date of contract award;
- Five days after a debriefing date offered to the protester under a timely debriefing request and no additional questions related to the debriefing are submitted; or
- Five days after the government delivers its written response to additional questions submitted by the unsuccessful offerors, whichever is later.”

This deviation is effective immediately and will remain in effect until it is incorporated in the DFARS or rescinded.

■ **List of Supplies to be Competed When Purchasing from Federal Prison Industries**

**(FPI):** Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) requires the DOD to publish a list of product categories for which the FPI’s share of the DOD market is greater than 5%. Products on the list must be procured using competitive (or fair opportunity) procedures (see DFARS 208.602-70, Acquisition of Items for Which FPI Has a Significant Market Share). In conducting such a competition, DOD contracting officers must consider a timely offer from FPI for any of the products on the list. In addition, FPI must be included in the process even if the procurement otherwise would have been set aside in accordance with FAR part 19, Small Business Programs. When the FPI item is determined to provide the best value as a result of FPI’s response to a competitive solicitation, contracting officers are to follow the ordering procedures at <http://www.unicor.gov>.

The Office of Defense Policy/Defense Procurement and Acquisition Policy has forwarded a memorandum to each service’s deputy assistant secretary for procurement that contains a list of such product categories, by Federal Supply Classification (FSC) codes. The following is the list of products:

<b>FSC</b>	<b>Description</b>
7125	Cabinets, Lockers, Bins, and Shelving
7230	Draperies, Awnings, and Shades
8405	Outerwear, Men’s
8420	Underwear and Nightwear, Men’s

FSC 8420 has been added to the list. FSC N071, Installation of Equipment – Furniture; FSC 7210, Household Furnishings; FSC 8315, Notions and Apparel Findings; FSC 8415, Clothing, Special Purpose; FSC 8470, Armor, Personal; and FSC 9905, Signs, Advertising Displays, and Identification Plates, are removed from the list.

For more on the changes made last year to the list, see the March 2017 *Federal Contracts Perspective* article “DOD Updates FPI’s Purchase List.”

■ **Update to Contract Payment Instructions:** This memorandum, from Shay Assad, Director of Defense Pricing/Defense Procurement and Acquisition Policy, alerts the services’ deputy assistant secretaries responsible for acquisition that PGI 204.7108, Payment Instructions, has been updated to provide a standard set of payment instructions, in table format, that define how payments should be made based on the payment request and type of supply or service being

acquired. This table is at [https://www.acq.osd.mil/dpap/dars/pgi/pgi\\_htm/PGI204\\_71.htm#payment\\_instructions](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI204_71.htm#payment_instructions).

Prior to this change, contracting officers were required to provide specific payment instructions to determine how costs would be allocated for multi-funded contracts, cost contracts, and contracts with progress payments. This approach produced incorrect payment instructions often being entered on the contract award, negatively affecting payment processing. According to the memorandum, “payment instruction errors were the third most common cause of contract deficiency reports, even though payment instructions are required on only about 10% of awards.”

“Going forward, when payment instructions are required, the contracting officer shall insert either the entire table at PGI 204.7108(b)(2), or the above link to the table, in Section G of the contract [Contract Administration Data] (or its equivalent). The payment office shall allocate and record the amounts paid to the accounting classification citations in the contract using this table based on the type of payment request submitted (see the DFARS clause 252.232-7006 [Wide Area WorkFlow Payment Instructions]) and the type of effort.”

#### ■ **Early Engagement Opportunity Regarding Implementation of NDAA for FY 2018:**

DOD is announcing that it is providing the public the opportunity to provide early input on the implementation of the acquisition-related provisions of the NDAA for FY 2018 (Public Law 115-91).

“The public is invited to submit early inputs on sections of the NDAA for FY 2018 via the Defense Acquisition Regulations System (DARS) website at <http://www.acq.osd.mil/dpap/dars/index.html>. The website will be updated when early inputs will no longer be accepted. Please note, this venue does not replace or circumvent the rulemaking process; DARS will engage in formal rulemaking, in accordance with 41 USC 1303, Functions and Authority [of the Federal Acquisition Regulatory Council] when it has been determined that rulemaking is required to implement a section of the NDAA for FY 2018 within the acquisition regulations.”

## **NASA REVISES INVOICE SUBMISSION PROCESS**

The National Aeronautics and Space Administration (NASA) is finalizing, without changes, its proposal to make revisions to its voucher and invoice submittal and payment process to comply with the Office of Management and Budget (OMB) memorandum that directed federal agencies to transition to electronic invoicing for appropriate federal procurements by the end of Fiscal Year (FY) 2018 (for more on the OMB memorandum, see the August 2015 *Federal Contracts Perspective* article “Agencies to Convert to All-Electronic Invoicing”).

In September 2016, NASA revised its voucher submission and payment process to electronically process cost-type vouchers under cost-reimbursement type contracts. To have invoices for fixed-price contracts submitted electronically, NASA proposed to revise two NASA FAR Supplement (NFS) clauses: NFS 1852.216-80, Task Ordering Procedure, to add an Alternate II for use with fixed-price contracts; and NFS 1852.232-80, Submission of Vouchers/Invoices for Payment, by revising paragraph (c) to add the information required for fixed-price invoices (paragraph (c) already addressed the information required for cost-reimbursement contracts).

No comments were submitted in response to the proposed rule, so it is finalized without changes. For more on the proposed rule, see the October 2017 *Federal Contracts Perspective* article “NASA Proposes Revised Invoice Submission Process.”

## OFPP PROPOSES REDUCING VALUE ENGINEERING REPORTING

The Office of Federal Procurement Policy (OFPP), a part of the Office of Management and Budget (OMB), is proposing to modify OMB Circular A-131, Value Engineering, to reduce the reporting burden on federal agencies.

Value engineering (VE) is a management technique that is used to analyze activities and identify alternative processes for completing the activities at a lower cost. Contractors that submit VE change proposals that are accepted by the government share in the savings the government realizes from the reduced costs of acquisition, operation, maintenance, and logistic support. Industry first developed VE during World War II as a means of continuing production despite shortages of critical materials, and the federal government subsequently adopted VE by issuing OMB Circular A-131.

Overall usage of VE by federal agencies has been limited. OFPP believes agency workforce awareness and consideration of VE can be improved by redirecting agency resources away from compliance reporting and towards information sharing with other agencies on use of VE through the Acquisition Gateway. Therefore, OFPP proposes to replace OMB Circular A-131's Section B, Reports to OMB, with the following:

**Section 8: *Information Sharing*.** Agencies are encouraged to share best practices, case studies and other information about their experience using VE on the Acquisition Gateway (<https://hallways.cap.gsa.gov/login-information>). The Gateway connects federal buyers with resources and tools to improve acquisition throughout the government. The Acquisition Innovation Hub within the Gateway facilitates information sharing between acquisition professionals and other stakeholders. Sharing information on the Hub can help build greater awareness of VE and accelerate the pace of innovation and other benefits that can come from the use of this management tool.

In addition, OFPP proposes to delete: (1) paragraph f from Section 7, Agency Responsibilities, which refers to reporting; and (2) the attachment to OMB Circular A-131, which provides a format for reporting to OMB.

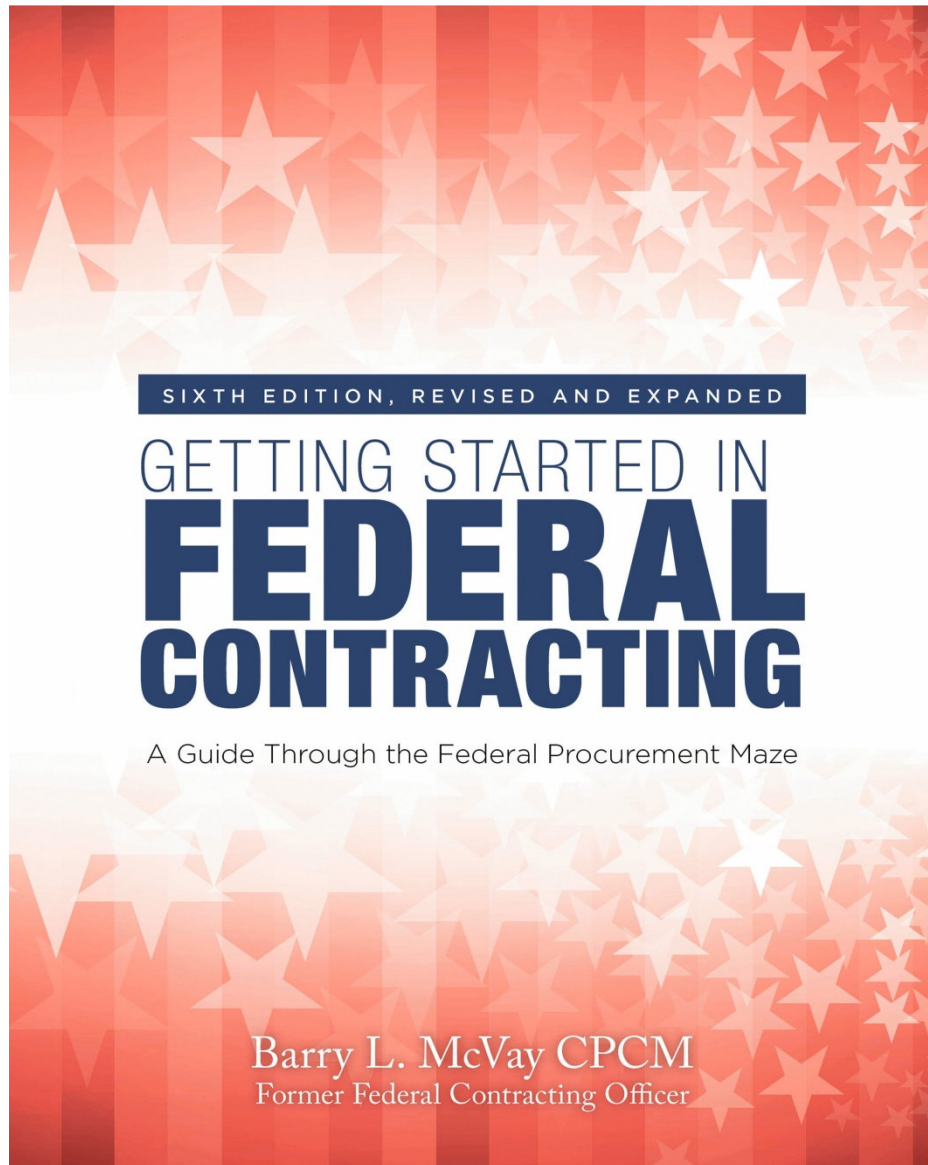
Although public comment is not required in the development of these changes, OMB welcomes input on the proposed amendments to OMB Circular A-131 and will consider feedback prior to finalizing changes to it. Those interested in submitting comments should do so by April 5, 2018, through <http://www.regulations.gov>.

## CBCA PROPOSES PREFERENCE FOR ELECTRONIC FILING

The Civilian Board of Contract Appeals (CBCA), which hears disputes involving contract with civilian agencies, is proposing to simplify and modernize access to the CBCA by establishing a preference for electronic filing. In addition, the CBCA is proposing to increase conformity between its rules and the Federal Rules of Civil Procedure, streamline the wording of the its rules, and clarify current rules and practices.

Comments on this proposal should be submitted no later than May 29, 2018, identified as "CBCA Amendment 2018-01, BCA Case 2018-61-1," by either of the following methods: (1) the Federal eRulemaking Portal: <http://www.regulations.gov>; or (2) mail to: Civilian Board of Contract Appeals, Office of the Chief Counsel (GA), 1800 M Street NW, Sixth Floor, Washington, DC 20036.

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**468 pages, 2017, ISBN: 978-0-912481-27-2, \$39.95**  
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