



Weekly Report for January 26, 2018

GOVERNMENT CONTRACTS

General Services Administration Acquisition Regulation (GSAR); Federal Supply Schedule, Order-Level Materials

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to clarify the authority to acquire order-level materials (OLMs) when placing an individual task or delivery order against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA). OLMs are supplies and/or services acquired in direct support of an individual task or delivery order placed against an FSS contract or BPA, when the supplies and/or services are not known at the time of contract or BPA award. For certain FSS vehicles, contractors will now be able to provide OLMs that are not separately priced on their FSS contracts. See [83 Fed. Reg 3275](#).

Civil Monetary Penalty Inflation Adjustment

The Department of Defense is issuing a final rule to adjust each of its statutory civil monetary penalties (CMP) to account for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016, and for each year thereafter.

Federal Acquisition Regulation; Federal Acquisition Circular 2005-97; Introduction

This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005-97. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, can be found at [83 Fed. Reg. 3396](#).

Federal Acquisition Regulation; Trade Agreements Thresholds

DoD, GSA, and NASA are issuing a final rule amending the FAR to incorporate revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative, [83 Fed. Reg. 3396](#).

Federal Acquisition Regulation; Federal Acquisition Circular 2005-97; Small Entity Compliance Guide

This document is issued under the joint authority of DOD, GSA, and NASA, [83 Fed. Reg. 3399](#). This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005-97, which amends the FAR.

Interested parties may obtain further information regarding this rule by referring to FAC 2005-97, which precedes this document.

PILIEROMAZZA NEW BLOG

How to Tell Your Customer “Hands Off My Workforce!” Understanding Your Rights as a Government Contractor

By [Sarah Nash](#)

Most contractors are used to their government customers' idiosyncratic preferences while still satisfying the customer's needs. But at what point does a government official's overbearing nature change from inconvenient to impermissible? This is a question we've been hearing more and more often from our clients. As a rule, the government is not supposed to interject themselves into the employment affairs of government contractors. However, as more and more seasoned contracting officers and other contracting officials retire, the likelihood that inexperienced government officials will over-step their authority with respect to employment matters magnifies. This article provides examples of government micromanagement should raise immediate red flags and tips of when to notify the government of a potential problem. www.pilieromazza.com/blog.

RECENTLY ISSUED GAO DECISIONS

Red River Computer Company, Inc.; MIS Sciences Corp., B-414183.8, B-414183.9 et al. (Dec. 22, 2017): Several protesters challenged the award of a BPA to three offerors, arguing that (1) the BPA was outside the scope of one of the awardee's FSS, (2) the technical evaluation was unreasonable, (3) the agency engaged in unequal discussions, and (4) the price evaluation was inconsistent with the solicitation. (Note: This protest followed earlier protests, in which GAO held that the agency failed to consider whether the BPA services fit within one of the awardee's FSS and that an awardee's price proposal did not comply with the solicitation.) In this protest, only the price evaluation ground was successful. For that protest ground, one of the protesters argued that one of the awardees failed to comply with the solicitation's requirement to use BPA-level discounts. Instead, that offeror used additional task order-level discounts. GAO held that the agency's price evaluation was unreasonable because it allowed the awardee to submit a non-compliant proposal. Furthermore, GAO held that the protester was prejudiced because the awardee was able to gain a significant price advantage. (<https://www.gao.gov/assets/690/689456.pdf>)

East Coast Utility Contractors, Ltd., B-415493; B-415493.2 (Jan. 16, 2018): The protester argued that the agency failed to consider the past performance of one of the protester's managers, as required by the RFP. The RFP advised that an offeror without a record of relevant past performance would be evaluated neutrally for past performance, but that a different rating "may be achieved if the offeror proposes management personnel who have a successful record of past performance on relevant, recent contracts." GAO found that the agency failed to consider the past performance of the protester's management personnel and sustained the protest on that basis. GAO also held that the best value tradeoff decision was unreasonable. Notably, the agency selected the awardee at a \$70 million price premium when the awardee's ratings were only marginally higher. That, combined with the flawed past performance evaluation, made the agency's best-value tradeoff decision unreasonable. (<https://www.gao.gov/assets/690/689459.pdf>)

CAPITOL HILL

Small Business Information Sharing: Combating Foreign Cyber Threats

On Tuesday, January 30, 2018 at 11:00 a.m., the House Small Business Committee will hold a hearing titled “Small Business Information Sharing: Combating Foreign Cyber Threats.” The purpose of this hearing is to discuss efforts by foreign-backed firms to infiltrate and weaken the information technology systems of small businesses. Experts believe these attacks are a means of infiltrating America’s critical infrastructure to weaken national security. Members are expected to discuss H.R. 4668, the Small Business Advanced Cybersecurity Enhancements Act of 2017, and examine how federal agencies are facilitating greater information sharing with small businesses that are vulnerable to foreign-backed cyber attacks. A live stream of the hearing will be available [here](#).

Velázquez Report: Small Firms Harmed by Lack of Long-Term Budget

On January 24, 2018, House Small Business Committee Ranking Member Nydia Velázquez released a [report](#) discussing the effects of short-term appropriations on small businesses. The report first discusses the immediate impact of fiscal cliffs on small businesses, such as uncertainty in the 7(a) Loan Program and the Disaster Loan Program. Although funds generally remain available for disaster relief throughout government shutdowns, the recent continuing resolution has not granted the Small Business Administration’s request for additional appropriations in order to keep up with demand for the program, which means the SBA may cease making disaster loans available by mid February. Additionally, Ranking Member Velázquez highlights concerns about the long term effects of continuing resolutions, which prevent federal agencies from planning new contract solicitations that reach far into the future, including those with small businesses.