Weekly Report for February 15, 2019

GOVERNMENT CONTRACTING

The General Services Administration (GSA) implemented a new process in SAM that allows non-federal entity registrants to submit common federal government-wide Representations and Certifications for financial assistance. The procurement Representations and Certifications have not changed. Non-federal entities creating new SAM registrations and existing non-federal entities completing their annual SAM registration renewals will be required to review and certify their financial assistance Certifications and Representations before their registration can be activated. Registration in SAM is required prior to receipt of federal awards and must be updated annually by non-federal entities, therefore federal agencies will use the SAM registration information to verify non-federal entity compliance with application and award requirements. To view instructions on how to submit Representations and Certifications in SAM, please see the user guide.

The Department of Justice announced that the U.S. filed suit against Mission Support Alliance LLC (MSA), Lockheed Martin Corporation (LMC), Lockheed Martin Services Inc. (LMSI), and Jorge Francisco Armijo for alleged false claims and kickbacks in connection with a multi-billion dollar contract with the Department of Energy (DOE) to support the environmental cleanup at the Hanford Site near Richland, Washington. MSA is a Delaware Limited Liability Corporation that, during the time alleged in the lawsuit, was owned by Lockheed Martin Integrated Technology LLC, Jacobs Engineering Group Inc., and Centerra Group (formerly G4S Government Solutions, and, prior to that, Wackenhut Services Inc.). Both Lockheed Martin Integrated Technology and LMSI were wholly-owned subsidiaries of LMC. Mr. Armijo is a Vice President of LMC and also served as a President of MSA during the time period in question. The allegations in the complaint relate to the management and technology solution services that MSA agreed to provide at Hanford. In January 2010, without competition, MSA awarded its affiliate, LMSI, a $232 million subcontract to perform that work from Jan. 1, 2010 through June 2016. The U.S.'s complaint alleges that the defendants knowingly made or caused false statements to the DOE regarding the amount of profit included in the billing rates for LMSI under the subcontract it was awarded by its affiliate, MSA. The complaint also alleges that the defendants' claims for these inflated rates violated the False Claims Act. In addition, the complaint alleges that LMC made payments of more than $1 million to Armijo and other MSA executives in order to obtain improper favorable treatment from MSA with respect to the award of the LMSI subcontract at the inflated rates. The complaint further alleges that these payments violated the Anti-Kickback Act.

The Department of Justice reported that two owners and an employee of for-profit, non-accredited schools were sentenced for bribing a public official at the Department of Veterans Affairs (VA) in exchange for the public official's facilitation of over $2 million in payments that were supposed to be dedicated to providing vocational training for military

veterans with service-connected disabilities. Albert Poawui, of Laurel, Maryland, was the owner of Atius Technology Institute ("Atius"), a school purporting to specialize in information technology courses. Sombo Kanneh, of McLean, Virginia, was Mr. Poawui's employee at Atius. Michelle Stevens, of Waldorf, Maryland, was the owner of Eelon Training Academy, a school purporting to specialize in digital media courses. James King, the VA official who all three defendants bribed, has pleaded guilty to bribery, wire fraud, and falsification of documents, and will be sentenced on February 15. According to admissions made in connection with Mr. Poawui and Mr. Kanneh's pleas, in or about August 2015, Mr. Poawui and Mr. King agreed that Mr. Poawui would pay Mr. King a seven percent cash kickback of all payments made by the VA to Atius. In exchange, King steered VR&E program veterans to Atius regardless of the veterans' educational needs or interests and notwithstanding their repeated complaints about the poor quality of education at Atius.

LABOR AND EMPLOYMENT

The Equal Employment Opportunity Commission (EEOC) issued a notice of proposed rulemaking proposing a revision to its federal sector complaint processing regulations in order to bring them into compliance with a federal circuit court decision concerning whether and when a complainant may file a civil action after having previously filed an administrative appeal or request for reconsideration with the EEOC. The proposed rule would clarify that an appeal to the EEOC is optional and that agency exhaustion can occur when an agency either takes final action on a complaint or fails to take final action on a complaint within 180 days of the complaint being filed. Since an EEOC appeal is options, complainants can file civil actions within 90 days of the receipt of an agency final action. Comments to the proposed rule are due April 15, 2019. 84 Fed. Reg. 31, 4015.

The Department of Labor announced the release of a new policy directive to establish a voluntary compliance program for high-performing federal contractors. The Voluntary Enterprise-wide Review Program (VERP) provides contractors with an alternative to the Office of Federal Contract Compliance Programs' (OFCCP) establishment-based compliance evaluations with a focus on recognizing contractors that demonstrate comprehensive corporate-wide compliance and model diversity and inclusion programs. In November 2018, OFCCP issued a separate directive establishing early resolution procedures to allow OFCCP and contractors with multiple establishments to cooperatively resolve compliance reviews while achieving corporate-wide compliance with OFCCP's requirements. OFCCP expects to begin accepting VERP applications in the fall.

According to Law360, the Department of Justice (DOJ) endorsed a relatively long time limit for whistleblowers to launch False Claims Act (FCA) suits, telling the U.S. Supreme Court that FCA cases not joined by the government do not need to start sooner. In an amicus brief, the DOJ sided with a defense industry whistleblower in a dispute over the FCA's statute of limitations. According to Law360, the DOJ's amicus brief argues there is no clear sign that the statute of limitations is shorter for whistleblowers, unlike other FCA provisions that expressly treat whistleblowers differently. In the case, a whistleblower manager, Billy Joe Hunt, accused Parsons Corporation and Cochise Consultancy Inc. of defrauding the Department of Defense in connection with a munitions cleanup contract. Mr. Hunt filed suit in late 2013 but had alleged that the fraud ceased in early 2007, placing him outside the FCA's usual six-year statute of limitations. However, the FCA contains an exception for when the government does not learn of the fraud until later, allowing suits to be filed as much as 10 years after wrongdoing occurred. The case presents the question of whether that exception applies to suits in which

the DOJ declined to intervene, as happened in Mr. Hunt's case. According to Law360, the DOJ argued there is no reason to think that the intent of the exception—to punish fraud that is hard to detect—should not apply to cases that whistleblowers handle without government help.

Investigations by the Department of Labor's Wage and Hour Division (WHD) have resulted in the recovery of $5,579,939 in back wages and benefits owed to 993 employees of nine subcontractors that provided power generator operation support for hurricane recovery efforts in Puerto Rico. WHD investigators found that the subcontractors violated requirements of the McNamara-O'Hara Service Contract Act (SCA), the Contract Work Hours and Safety Standards Act (CWHSSA), and the Fair Labor Standards Act (FLSA). Louis Berger U.S. Inc. and its parent entity Louis Berger Group Inc.—both based in Morristown, New Jersey—have paid $5,030,449 to resolve the SCA and CWHSSA violations while the subcontractors have paid $549,490 for the FLSA violations found by WHD. WHD investigators discovered violations that included failing to pay employees fringe benefits required by the SCA and failing to pay required wages to employees misclassified as independent contractors. Additionally, the practice of paying employees flat rates regardless of the number of hours that they worked resulted in overtime violations when those workers exceeded 40 hours in a week, without being paid overtime. WHD cited recordkeeping violations for employers' failure to maintain a record of the number of hours employees worked. Louis Berger US Inc. and Louis Berger Group Inc. have agreed to implement new procedures to ensure pay practices fully comply with applicable laws, and to ensure the compliance of subcontractors with the SCA, CWHSSA, and the FLSA on federal contracts.

CYBERSECURITY

The Government Accountability Office (GAO) released a report recommending that Congress consider developing comprehensive Internet privacy legislation to better protect consumers. The GAO decided to do the study after Facebook disclosed in April 2018 that a Cambridge University researcher may have improperly shared the data of up to 87 million of its users with a political consulting firm, which followed other incidents involving the misuse of consumers' personal information from the Internet. The report noted that the U.S. does not have a comprehensive Internet privacy law governing the collection, use, and sale or other disclosure of consumers' personal information. The report also examined how the Federal Trade Commission and Federal Communications Commission have overseen consumers' Internet privacy and sought stakeholders' views on the strengths and limitations of how Internet privacy currently is overseen and how, if at all, this approach could be enhanced.

PILIEROMAZZA BLOGS

TINA Traps: Defective Pricing in Competitively Awarded IDIQ Contracts
By Isaias Alba IV

While there has been extensive coverage of the fact that Truth in Negotiations Act ("TINA") thresholds for DoD were increased from $750,000 to $2M and certain civilian agencies have adopted the thresholds either via a FAR deviation or on an ad hoc basis, we have seen an increase in clients falling into insidious TINA traps—task orders on competitively awarded IDIQ contracts that require new labor categories or requirements not contemplated under the initial RFP.
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Not So Fast: Practical Considerations Before Novating Your GSA Schedule Contract
By Kathryn V. Flood

The acquisition market for federal contractors is booming. Acquisition can provide a buyer the opportunity to target its growth strategically by acquiring the seller's past performance and experience, in addition to gaining the seller's personnel and resources. Of course, part of what makes a seller attractive is the contracts found in its portfolio. While the government does not officially condone the "buying and selling" of federal contracts, a contract may be novated after an acquisition if the buyer has acquired all of the seller's assets or has acquired the entire portion of the seller's assets involved in performing the contract. Novations are necessary after acquisitions where the seller (or acquired assets or division of the seller) will be merged into the buyer and not be held as a separate subsidiary, so the seller's contracts implicated by the acquisition can continue to be performed and administered under the buyer's name.
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