

Leading the News

Amazon Groceries to Immigration Detainees? Emails Say Maybe

Amazon.com Inc. has been in talks with several Homeland Security Department component agencies in the hopes of striking deals to sell AmazonFresh groceries to federal immigration detainees and provide lockers at airports, according to an email obtained by Bloomberg Government. 473

If Watchdog Works for Contract Protesters, Why the Decline?

Several reasons could explain the decrease in bid protest filings at the Government Accountability Office in fiscal 2017 despite an “effectiveness” rate showing that the watchdog regularly provides relief to contractors, attorneys said. 474

Whitefish Halts Puerto Rico Work Early Over Unpaid \$83 Million

The company that landed and then lost a \$300 million, no-bid contract to rebuild Puerto Rico’s storm-ravaged grid said it’s halting its work early because the commonwealth’s utility hasn’t paid it \$83 million it’s owed. 475

Congress to Send Trump His First Defense Policy Bill

President Donald Trump will receive his first \$700 billion defense policy bill, legislation that exceeds legal spending caps, after the Senate cleared the measure Nov. 16 by voice vote. 475

House Backs Spending Cap-Defying \$700 Billion Defense Bill

Lockheed Martin Corp. and Boeing Co. would see a boost in the Pentagon’s aircraft orders and troops would get bigger paychecks under a compromise 2018 defense authorization bill the House passed Nov. 14. 476

News

GSA Announces Winners of \$50 Billion Alliant 2 LB Awards

The Nov. 17 award of the 10-year, \$50 billion Alliant 2 Large Business contract to 61 companies pits the largest incumbent Alliant Large Business contractors against 28 dynamic new entrants for some of the largest federal information technology orders. 478

Service Contracts Come Into Congress’s Crosshairs

Congress has ordered the Defense Department to establish guidelines to better evaluate the Pentagon’s service contracts — the more than \$150 billion it spends on functions provided by people as opposed to purchased goods. 478

Pentagon’s \$150 Billion in Spending on Services Rouses Congress

Congress is seeking tighter control over the more than \$150 billion that the Pentagon spends each year on logistics, maintenance, health care, and other services. 479

Six Agencies Lose Ground on IT Performance in Latest Scorecard

Twice as many federal agencies regressed as improved in their efforts to acquire, manage, and implement information technology, according to the latest Federal Information Technology Acquisition Reform Act scorecard, released Nov. 14. 480

Secret \$97 Billion Bomber Praised by Pentagon Inspector General

The Air Force’s classified next-generation bomber program began with a solid plan for meeting cost goals and war fighting requirements, which include an option to fly unmanned missions, according to a newly declassified audit from the Pentagon’s inspector general. 480

Federal Contracts Report

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Automatic Contract Close-Out Helps DOD Face 'Massive Challenge'

Efforts over the past decade to improve procurement data standards used in Defense Department contracts have presented "a massive challenge," a Pentagon official said at a Coalition for Government Procurement conference Nov. 16 in Falls Church, Va. 481

Pentagon Will Be Allowed to Conduct Its Own Security Clearances

The Pentagon will get control over security clearances of its employees and defense contractors under the final 2018 defense authorization measure. 482

Lockheed Exec Draws Senators' Ire in Hearing's Testy Exchange

A testy exchange about potential conflicts of interest dominated a Lockheed Martin executive's Nov. 16 hearing in front of the Senate Armed Services Committee. 482

Senate Confirms Ex-Raytheon Executive as Army Secretary

The Senate on Nov. 15 confirmed Mark Esper, a former Raytheon vice president for government relations, to be secretary of the Army, by an 89-6 vote. 483

Governor Shows Will to Run Puerto Rico as Power Chief Quits

The resignation of the head of Puerto Rico's power agency made clear that Governor Ricardo Rossello wants to remain in charge of the battered island's recovery. 483

Puerto Rico Utility Admits Error as Senators Blast Price-Gouging

Puerto Rico's utility acknowledged that it made some missteps in issuing contracts to help it rebuild its grid, even as it defended its choice of two untested companies to lead the effort. 484

Puerto Rico's Other No-Bid Contractor Says It's No Whitefish

Even though it's best known for fracking and only been in the business of restoring downed power lines for a few months, Mammoth Energy Services Inc. got a no-bid, \$187 million contract to restore electricity to hurricane-ravaged Puerto Rico. 485

Freeze-Dried Plasma From France May Get OK for U.S. Soldiers

The Pentagon may be about to win its years-long push to be able to use freeze-dried plasma from France to treat battlefield injuries. 486

IRS Can Use Tax Return Info to Disqualify Contractors, Rule Says

Tax return information can stand between a contractor and an Internal Revenue Service contract award, according to a Treasury Department interim rule published Nov. 16 in the Federal Register. 486

\$2.5 Billion for Call Centers May Move to GSA Schedules

The General Services Administration is considering shifting spending from USA Contact, an existing multiple-award contract for call centers, to a new Special Item Number (SIN) under the GSA's Schedule IT-70, according to an amendment released Nov. 14. 487

Pentagon Seeks Industry Input on Accelerating Cloud Adoption

The Defense Department wants industry to help it accelerate the adoption of cloud services across agencies and military services. 487

Defense Health Agency to Compete Up to \$2.5 Billion in Contracts

The Defense Health Agency, created in 2013 to oversee information technology, procurement, facility management, and other support services for military health programs, released its industry forecast, including 208 contracting opportunities. 488

Six Spots May Be Open on \$900 Million Medicare Outreach Contract

The Centers for Medicare and Medicaid Services is offering as much as \$900 million over seven years for help launching new outreach and educational campaigns, releasing a request for proposals package Oct. 26. 488

Air Force Wants \$500 Million 'Anti-Jam' Satellite Comms System

The Air Force Space Command's Space and Missile Systems Center is seeking contractor feedback on developing a satellite communications capability that can't be jammed by an adversary, according to a Nov. 13 request for information. 489

Pentagon Revamps \$325 Million Network Modernization Opportunity

The Defense Department's Office of the Chief Information Officer (DOD CIO) is seeking information technology support services to meet its network and information mission through a contract originally estimated at as much as \$325 million. The contract, formerly known as Mission Support Services, is now called CIO Mission Support Services (CMSS). 489

Future of DOD's Hardware, Software Buying Is at DISA

The Defense Information Systems Agency is ready to adopt new technologies that would lead to spending more on software and less on hardware, according to agency officials and initiatives listed in the agency procurement forecast. 490

The U.S. Military's Favorite Cyber Contractor

Old-school firewalls and antivirus software try to block or at least detect hackers, but when those systems fail, they can't do much to limit the trail of destruction. More often than you might think, corporate information technology staffers are reduced to wandering around to physically tinker with infected machines to figure out the problem. And the most advanced secu-

urity software can be undone by the dumbest of human errors. Equifax Inc. blamed the hack of 145 million Social Security numbers on an unnamed IT guy failing to install a security update. 490

Why Government Is Behind the Curve on Agile Software Development

Only four out of 24 federal agencies have a clearly defined policy when it comes to incremental (or Agile) software development, said the Government Accountability Office, the U.S. federal government's top watchdog. According to a Nov. 7 report, 11 of the 24 agencies studied have an incremental development policy in place but do not clearly define the process for certifying which projects qualify as incremental. Nine agencies have no policy. 491

Federal 'Social Engineering' Market Emerges in Era of Cyber War

The Pentagon is calling on vendors to help develop "social engineering" technologies and services that can deceive and confuse adversaries using false information, while also seeking to protect Americans from such attacks. 492

C5 Consortium Wants Ideas to Enhance Army Training Management

The Pentagon is using its Other Transaction Authority (OTA) to compete the development of a prototype for centralized training, to be known as the Army Training Information System (ATIS). OTAs allow the government to dispense with some of the normal acquisition regulations. 492

Florida Attorney Said to Be Pick to Lead Contractor Watchdog

Craig E. Leen, city attorney of Coral Gables, Fla., is likely to be picked to lead a Labor Department office that audits government contractors for workplace non-discrimination and affirmative action compliance, sources in the federal contracting community told Bloomberg Law. 493

Legal News

Fluor's Navy Base Protest Led to \$495 Million Contract Win

Fluor Federal Solutions LLC successfully protested the Navy's \$492 million Guam base operations support services contract to DZSP 21 LLC, which led to the reopening of the competition that Fluor eventually won, the Government Accountability Office said (*Fluor Fed. Solutions LLC*, GAO, B-410486, 1/18/17, decision released 11/20/17). 494

\$663 Million Reversal in Guardrail Case Will Stand, Court Rules

The decision to throw out a \$663 million false claims verdict against a highway guardrail provider will stand, the U.S. Court of Appeals for the Fifth Circuit said (*United States ex rel. Harman v. Trinity Indus.*

Inc., 5th Cir., No. 15-41172, petition for rehearing en banc denied 11/14/17). 494

KBR's Concealment Makes a Difference, Whistle-Blower Says

The D.C. Circuit should examine how a recent Fifth Circuit victory for defendant Trinity Industries Inc. in a false claims case is distinguishable from a case alleging the concealment of kickbacks against Kellogg Brown & Root Services Inc., whistle-blower Harr Barko told the court (*United States ex rel. Barko v. Halliburton Co.*, D.C. Cir., No. 17-7057, letter advising of additional authorities filed 11/13/17). 494

Military Dictated Burn-Pit Use Despite Known Risks, KBR Says

A lawsuit from soldiers alleging harm from Kellogg Brown & Root Services Inc.'s use of waste burn pits in Iraq under a logistics support contract can't be revived because the military made all key decisions involving their use, and therefore the contractor has immunity under the political question doctrine, KBR told the U.S. Court of Appeals for the Fourth Circuit (*In re KBR Inc., Burn Pit Litigation*, 4th Cir., No. 17-1960, appellees brief filed 11/14/17). 495

XPO Appeals Decision Backing \$7 Billion Transport Contract

XPO Logistics Worldwide Government Services LLC will appeal a decision upholding Crowley Logistics Inc.'s selection to perform a \$7 billion contract to provide freight transport services for the Defense Department (*XPO Logistics World Gov't Servs. LLC v. United States*, Fed. Cl., No. 17-1080 C, notice of appeal filed 11/13/17). 495

Epsilon Can't Challenge Navy Support Order, Watchdog Rules

Epsilon Systems Solutions Inc. couldn't protest the performance of a \$91 million Navy support task order because the alleged relaxation of requirements for the awardee involved a matter of contract administration, the Government Accountability Office said (*Epsilon Sys. Solutions Inc.*, GAO, B-414410, 11/6/17, decision released 11/16/17). 495

SEC Owes Protest Costs to Investigative Service Offeror

The Securities and Exchange Commission shouldn't have opposed Protection Strategies Inc.'s meritorious protest of a now-terminated investigative services contract award to PAE Professional Services Inc., the Government Accountability Office ruled (*Protection Strategies Inc.*, GAO, B-414573, 11/9/17, decision released 11/14/17). 496

Weekly Case Roundup

Agility Public Warehousing Co. KSCP said it is owed \$47 million for its performance under a contract to provide logistics and warehousing services to support U.S. military forces and reconstruction efforts in Iraq (*Agility Public Warehousing Co. KSCP v. United States*, Fed. Cl., No. 17-1791 C, complaint filed 11/14/17). 496

International News

Trump Chases U.S. Arms Deals in Asia to Help Him Win Re-Election

President Donald Trump had one question for Vietnamese Prime Minister Nguyen Xuan Phuc: Why hasn't his country buying more American military equipment? **497**

U.S. Plans to OK \$10.5 Billion Missile Defense Sale to Poland

The State Department notified Congress that it plans to approve a potential \$10.5 billion missile defense sale for Poland, according to a Defense Security Cooperation Agency statement. **498**

Leading the News

Competition

Amazon Groceries to Immigration Detainees? Emails Say Maybe

Amazon.com Inc. has been in talks with several Homeland Security Department component agencies in the hopes of striking deals to sell AmazonFresh groceries to federal immigration detainees and provide lockers at airports, according to an email obtained by Bloomberg Government.

DHS has started buying goods through Amazon Business by way of a centralized agency account. This occurred after Amazon alerted DHS in April 2016 that agency officials already had thousands of separate accounts with Amazon and Amazon Business, the company's business-to-business unit.

Amazon is now seeking to grow its relationship with DHS in a variety of ways, according to 114 pages worth of emails obtained in response to a Freedom of Information Act request from Bloomberg Government that sought answers to two earlier FOIA requests filed by government contracts consultants Larry Allen, president of Allen Federal Business Partners, and Ray Bjorklund, president of BirchGrove Consulting.

"I'm not saying it's good or bad," Bjorklund told Bloomberg Government regarding an expanded relationship between Amazon and Homeland Security. "But I hope DHS spends enough time thinking about this to ensure openness and transparency."

The fact that Amazon might be first to the market with novel ideas, while possessing a powerful platform, "shouldn't close the door to competition," Bjorklund said.

DHS officials also have found that workers at the Federal Emergency Management Agency, and apparently other DHS components, have been making purchases with their own credit cards for personal use — against DHS policy, the email trove revealed.

'Fresh Food Deliveries' Using an account to buy goods wasn't the only way DHS could benefit from a relationship with Amazon, Amazon Business executive Kelly Gegich wrote in a March 10, 2017, email to a DHS official named Robert — the rest of his name was redacted.

"We've heard from a variety of components about their interest in other services that Amazon provides," Gegich wrote.

According to Gegich, they include:

- Amazon Lockers: Described as "self-service delivery locations" that "could be utilized by [the Transportation Security Administration] at airports, etc.;"
- An Amazon Campus/Store that "[c]ould be co-located on DHS compound or anywhere that an Amazon physical presence is located"; and
- AmazonFresh, "[f]or fresh food deliveries to ICE detainees, etc.," she wrote, referring to Immigration

and Customs Enforcement.

"And so many more. . ." wrote Gegich, who couldn't be reached for comment.

Amazon spokeswoman Lori Torgerson declined to comment on the status of the project ideas mentioned by Gegich.

"We regularly communicate with a variety of Amazon Business customers regarding opportunities to leverage our consumer offerings in their own business environments," Torgerson told Bloomberg Government in a written statement.

Competitive Concerns The notion of AmazonFresh delivering groceries to ICE detainees could quickly raise several issues for the agency.

There's the issue of price — concerns about high-end grocery runs being made to federal immigration detainees — and whether such a deal would be in the best interest of taxpayers.

In the wake of Amazon's purchase of Whole Foods the AmazonFresh delivery service reportedly boasts more than 800 items from Whole Foods's in-house brand. Though Whole Foods's prices generally have decreased in recent weeks, according to reports, the chain has consistently suffered a reputation as offering overpriced groceries.

Amazon's competitors have raised concerns about early versions of the online marketplace provision in the National Defense Authorization Act. The concern that Amazon unfairly stands to benefit with the lion share of profits could be raised again, Bjorklund said.

There's a risk in turning one or more of these ideas into a "monopoly situation," he said.

Discouraging 'Rogue Spend' The FOIA documents include several exchanges in which questions were raised about workers using their own credit cards to pay for items off of Amazon Business's DHS accounts for their "personal use."

In one April 10 email exchange that appears to be between several DHS officials — with some of the names redacted — a DHS accountant named Marie Beatrice Dreuth was asked, "Can Amazon Business be used to make purchases using their personal credit card?"

A second official, whose name was redacted, responded, "No, they can't use AB for personal purchases using their credit card."

This prompted the first official to reply, one minute later, "I did not think so. But I have discovered that folks are using their personal credit cards."

In a separate exchange that day, an unnamed DHS official asked Peter Donnelly, who appears to be a Chicago-area based Amazon official, whether there was a "plan or process" to deal with the issue. Donnelly suggested that DHS officials reiterate that all purchases are visible to DHS management.

Usually that "discourages rogue spend as customers do not want their personal shopping habits being reviewed by their employer."

A DHS spokeswoman didn't respond to questions by deadline.

Becoming a Player The FOIA emails make clear that some DHS officials have balked at the increased role of private company like Amazon taking over what used to be governmental functions.

An unidentified DHS official expressed concern in a February email exchange about complying with the Trade Adjustment Assistance Reauthorization Act of 2015. At the same time, the official broached a broader concern:

"We are worried about TAA compliance, sourcing concerns, amongst other things," the official wrote, and didn't think that Amazon would ever be a player in the Government space."

By SAM SKOLNIK

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Bid Protest

If Watchdog Works for Contract Protesters, Why the Decline?

Several reasons could explain the decrease in bid protest filings at the Government Accountability Office in fiscal 2017 despite an "effectiveness" rate showing that the watchdog regularly provides relief to contractors, attorneys said.

The disqualification of an overly enthusiastic protester, raising the minimum contract value threshold for valid protests, and reliance on the U.S. Court of Federal Claims could all explain the decrease, as may other causes, they said.

The 7 percent drop in filed bid protests in fiscal 2017 — from 2,789 to 2,596 — occurred despite the GAO's 47 percent effectiveness rate for protesters.

That rate pertains to instances in which protesters are convinced: (1) the GAO to sustain a protest; or (2) an agency to fix a procurement error with corrective action, the GAO's annual report to Congress said.

"While the effectiveness rate remained fairly constant over the last two fiscal years, what may be more noteworthy is the gradual increase in the rate over the last five fiscal years," Gregory H. Petkoff, partner with Jenner & Block, Washington, told Bloomberg Government. The effectiveness rate was 46 percent in fiscal 2016 but has climbed from 43 percent since fiscal 2014, the report showed.

"This tells me that contractors are becoming more selective when deciding when to file a protest, and they often have a good reason for filing a protest," Petkoff said.

Jurisdiction Shrunk The fiscal 2017 National Defense Authorization Act may have made it more difficult to protest defense task orders at the GAO, he said.

That measure increased — to \$25 million from \$10 million — the minimum value of a defense task order award protest the GAO could hear.

Some of the drop in filings could have resulted from 2½-month window during which the GAO lost juris-

diction over protests of civilian agency task order awards, he said.

A sunset clause in the fiscal 2012 NDAA ended the GAO's jurisdiction over protests of civilian agency task orders exceeding \$10 million on Sept. 30, 2016; then-President Barack Obama restored that jurisdiction Dec. 14, 2016.

Some contractors missed protest opportunities because of the sunset clause, including HP Enterprise Services LLC, which couldn't challenge an information technology support order the General Services Administration awarded to CACI Inc.

Court Reliance, Less Discretion The U.S. Court of Federal Claims may hear task order protests in limited situations — when a protester alleges that a task order increases the scope, period, or maximum of value of an underlying contract.

Contractor reliance on that court could be another cause of GAO filing decrease, said Wojciech Kornacki, who is of counsel with Watson and Associates LLC, Washington.

"What the GAO's report doesn't show is that there seems to be more bid protests filed at the U.S. Court of Federal Claims in the last several years — which offers another avenue of contesting government contract awards," he said.

The U.S. Court of Federal Claims's fiscal 2012 report showed 91 pre- and post-award protests were filed seeking injunctive relief; the court's fiscal 2015 report showed 133 such protests; and the court's fiscal 2016 report showed 113.

The court's advisory council briefing this month confirmed the growing number of protests filed at the court, Kornacki said, adding that the Department of Justice has formed a special attorney team to respond to the trend.

Another cause of the GAO protest decline could be the increased use of procurements that award the lowest-priced, technically acceptable offeror, said William F. Savarino, a partner with Cohen Mohr LLP in Washington.

LPTA procurements have steadily grown, from 920 in fiscal 2008 to more than 12,000 in each of the past two fiscal years, according to Bloomberg Government data.

Such procurements involve less discretion on the part of contracting officials, possibly presenting disappointed bidders with less questionable conduct to protest, Savarino said.

Targeting Frivolity Potential protesters may also have been dissuaded by recent unpredictability surrounding congressional plans to deter frivolous protests, Kornacki said.

The "loser-pays" provision at Section 827 in the fiscal 2018 NDAA isn't law yet, but upon taking effect, it would force certain contractors that unsuccessfully raise GAO protests to reimburse incurred costs to the Defense Department.

Finally, the simplest explanation for the protest decrease could be the one-year disqualification of an overzealous protester, Latvian Connection, in August 2016, Petkoff said.

Latvian, which had submitted 150 protests at the time of the GAO's disqualification decision, repeatedly failed to show it was capable of performing the contracts it protested, the GAO said.

By DANIEL SEIDEN

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Ethics

Whitefish Halts Puerto Rico Work Early Over Unpaid \$83 Million

The company that landed and then lost a \$300 million, no-bid contract to rebuild Puerto Rico's storm-ravaged grid said it's halting its work early because the commonwealth's utility hasn't paid it \$83 million it's owed.

Whitefish Energy Holdings LLC is shuttering its operations 10 days earlier than planned because it can no longer pay its contractors, said Andy Techmanski, the company's CEO. The tiny Montana-based company is under investigation after securing a sole-source contract with the Puerto Rico Electric Power Authority (PREPA).

"Today we had to stand down our crews," Techmanski said Nov. 20 in a phone interview from Puerto Rico. "We just don't have the money to continue to support and bankroll PREPA's operation."

The work stoppage is the latest blow in efforts to restore power to the island, which lost 80 percent of its electric grid after two hurricanes hit in September. Within the past week, Ricardo Ramos, PREPA's executive director, resigned after facing criticisms in Congress over the Whitefish contract. And four Florida utilities with hundreds of workers that have been hired as subcontractors by Whitefish plan to leave the island in the coming days, Whitefish spokesman Ken Luce said.

Meanwhile, the Army Corps of Engineers said Nov. 20 that it temporarily halted a contract with Fluor Corp., which was also working to restore power, over safety concerns. The Army Corps said the company could restart work Nov. 21.

Less than 47 percent of the island's power capacity is back up now.

A Nov. 19 letter from Whitefish to the bankrupt utility, which was obtained by Bloomberg News, demands payment for work it has performed — and also more than \$39 million "for anticipated demobilization costs."

PREPA and Fluor did not respond to requests for comment.

Whitefish said it would resume work if it got paid.

The company has been under fire for the prices it charged the bankrupt utility, leading PREPA to cancel its contract effective Nov. 30.

Under the accord, Whitefish charged as much as \$240 an hour for workers, an amount the House Natural Resources Committee called "exorbitant." The contract also assumed a 16-hour, seven-day workweek, allowing contractors and subcontractors to charge PREPA for huge amounts of overtime, the committee said in a report released Nov. 13.

"We weren't greedy," Techmanski said, adding that his company's rates were "middle of the pack" among proposals received by PREPA. Whitefish's reputation had been hurt by "non-factual news," he said.

Suspicion was raised when Whitefish, which the had only two employees, received the contract. It is based in Whitefish, Mont., which is the hometown of Interior Secretary Ryan Zinke.

Techmanski said he didn't know Zinke, and the Cabinet official said he played no role in the selection of Whitefish. Among Whitefish's financial backers are major donors to President Donald Trump.

"This is what happens when shady contracts are signed without transparency," Ramon Cruz, a former member of the Puerto Rico Energy Commission, the regulatory agency that oversees PREPA, said in an email. "To this date, we don't know what Whitefish did and didn't do."

— With assistance from Daniel Flatley and Richard Clough.

By ARI NATTE

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DOD

Congress to Send Trump His First Defense Policy Bill

President Donald Trump will receive his first \$70 billion defense policy bill, legislation that exceeds legislative spending caps, after the Senate cleared the measure Nov. 16 by voice vote.

The fiscal 2018 defense authorization measure (H.R. 2810) includes \$66 billion for war operations in the fiscal year that started Oct. 1. Lockheed Martin Corp. and Boeing Co. would see a boost in the Pentagon's aircraft orders. The bill also would authorize a 2.4 percent pay increase for the military, extend bonuses for service members, and make permanent a program to pay military widows and widowers \$310 a month.

"Congress can no longer delay in delivering our men and women in uniform the resources and equipment they need and deserve," Senate Armed Services Committee Chairman John McCain (R-Ariz.) said in September.

The bill marks lawmakers' determination to put more money into the military even though they have yet to agree on how to address the spending limits that Congress set in the 2011 Budget Control Act. Actual spending decisions will be made later in appropriations legislation.

Among other things, the compromise defense policy bill allows the Pentagon to buy:

- Three Littoral Combat Ships, made in two versions by Lockheed and Austal Ltd., one more than the Navy requested.

- Thirteen battle force ships, five more than the Navy sought. The additional ships include a DDG-5 Arleigh Burke destroyer — made by General Dynamics Corp. and Huntington Ingalls Industries Inc. — for a total of three.

- \$1.9 billion for 24 Boeing F/A-18 Super Hornet; \$739 million and 10 aircraft more than the administration sought.

- \$10.1 billion for 90 Lockheed Martin F-35 Joint Strike Fighter aircraft, \$2.6 billion and 20 aircraft more than requested.

- \$2.9 billion for Boeing KC-46A midair refueling tankers, \$400 million and two planes more than sought.

- \$980 million for 11 Lockheed MC-130J cargo aircraft, \$600 million and six planes more than requested.

By ROXANA TIRON

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OD

House Backs Cap-Defying \$700 Billion Defense Bill

Lockheed Martin Corp. and Boeing Co. would see a boost in the Pentagon's aircraft orders and troops would get bigger paychecks under a compromise 2018 defense authorization bill the House passed Nov. 14.

By a vote of 356-70, the House backed a \$700 billion defense policy bill (H.R. 2810) that would exceed the legal spending caps. It's a demonstration that lawmakers want to put more money into the military even though there's no agreement yet on how to do away with the pending limits Congress set in 2011.

Congress passes defense authorization laws each year. This one would set policy and maximum program levels for the fiscal year that started Oct. 1, though actual spending decisions will be made later in appropriations legislation.

"It's important to send a message to the men and women who risk their lives for us that the institution of the Congress is functioning and supports them," House Armed Services Chairman Mac Thornberry (R-Texas) said last week.

The legislation includes close to \$66 billion in war funds that aren't subject to statutory spending caps. It would authorize a 2.4 percent pay increase for the military, extend bonuses for service members, and make permanent a temporary program to pay \$310 a month to military widows and widowers.

The conference report will be formally transmitted only after action is completed on a companion bill, H.R. 374, which was introduced Nov. 14. The second bill was drafted in response to complaints about a provision in the military policy measure that would let the Pentagon approve medical products without Food and Drug Administration approval in certain conditions.

Ships The negotiated compromise would allow for the purchase of three Littoral Combat Ships, made in two versions by Lockheed and Austal Ltd. That's one more than the Navy requested. Overall, the negotiators decided to authorize 13 battle force ships, five more than the Navy sought. The additional ships include a DDG-51 Arleigh Burke destroyer — made by General Dynamics Corp. and Huntington Ingalls Industries Inc.

— for a total of three. The measure would also codify in law that the Navy should have a 355-ship force.

Aircraft It would authorize \$1.9 billion for 24 Boeing F/A-18 Super Hornets, which is \$739 million and 10 aircraft more than the Trump administration's request. The measure would also authorize \$10.1 billion for the procurement of 90 Lockheed Martin F-35 Joint Strike Fighter aircraft, which is \$2.6 billion and 20 aircraft more than the Pentagon requested. Boeing would also see a boost in its midair refueling aircraft production with \$2.9 billion authorized for 17 KC-46A tankers, which is \$400 million and two planes more than requested. Lockheed would also see additional authority for its MC-130J cargo planes. The bill would authorize \$980 million for procuring 11 MC-130J aircraft, which is \$600 million and six aircraft more than requested.

Helicopters Boeing and Lockheed also would stand to gain from provisions allowing the Pentagon to buy eight more Boeing Apache helicopters, eight more Chinook choppers, and five more Sikorsky Black Hawks (Sikorsky is now a unit of Lockheed). Textron Inc. and Boeing would be able to sell the Defense Department six more V-22 Osprey aircraft. They would also be able to benefit from a multiyear contracting provision that would last for seven years.

No Space Corps Negotiators rejected House-passed language to form a military Space Corps that would have reported to the Air Force secretary and would have been responsible for national security space programs. The compromise measure would shift much of the authority and accountability for the programs to the deputy defense secretary. The final measure would eliminate the position of principal defense space adviser and end an advisory group, the Defense Space Council. It also would scrap the position of deputy chief of staff of the Air Force for space operations. It would direct the deputy defense secretary to pick someone other than the Air Force secretary to be responsible for setting budget priorities. It would direct the deputy defense secretary to enter a contract with a federally funded research organization that is not affiliated with the Air Force to provide Congress with a road map to establish a separate military department responsible for national security space activities.

Bid Protests The Senate-approved bill called for reducing to 65 days, from 100 days, the time the Government Accountability Office has to resolve protests by losing bidders on military purchase. The GAO had opposed the provision. The compromise measure leaves the timeline at 100 days.

Commercial Marketplace To prompt the Defense Department to tap into the commercial market for goods ranging from bottled water to treadmills and even forklifts, conferees agreed to let the Pentagon use online commercial sites such as Amazon Inc., W.W. Grainger Inc., Staples Inc., or Walmart Inc.

Israel Missile Defense Israel's missile defense programs would keep enjoying strong congressional support. Israeli missile defense programs would be authorized at \$705 million, exceeding by \$558 million the amount the Trump administration requested. The measure would allow more to be spent on both procurement and research and development, according to the confer-

ence report text and a Senate Armed Services Committee press release. The authorization would be a boon for U.S. contractors such as Raytheon Co. and Boeing which are developing the missile systems in partnership with Israeli companies. As much as \$120 million would be authorized for Israel to procure the David's Sling Weapon System. Israel's Rafael Advanced Defense Systems and Raytheon are jointly developing the weapon, designed to shield Israel from short-range ballistic missiles, large-caliber rockets, and slow-flying cruise missiles.

The U.S. has an agreement with the government of Israel for the production and development of missile defense systems, so Congress determines spending levels for the programs.

The Israeli government would be authorized to spend another \$120 million on the Arrow Upper Tier program. Israel Aerospace Industries and Boeing have been developing the Arrow-2 and Arrow-3 systems, which are part of the Arrow Weapon System, Israel's national missile defense program. Arrow is designed to defend against medium-range ballistic missiles such as those possessed by Iran. Arrow-3 is also a two-stage interceptor whose purpose is to destroy an incoming target with an exo-atmospheric kill vehicle. The exo-atmospheric kill vehicle separates from the main rocket and is designed to collide with the incoming missile outside the earth's atmosphere.

Medical Research Negotiators agreed to remove Senate-passed limits to Defense Department medical research programs. Those programs enjoy support from both parties in the House and Senate.

FDA The Pentagon would be able to ask the FDA to expedite development of medical products necessary to prevent military emergencies and deaths on the battle-

field under compromise legislation sponsored by Rep. Greg Walden (R-Ore.), chairman of the Energy and Commerce Committee.

Guam The bill seeks to solve the workforce crisis on Guam where the Marine Corps forces are expected to relocate from Japan. It would authorize 4,000 H2-E guest worker visas for Guam.

Pro Athletes Graduates of the military academies and the Reserve Officers' Training Corps would have to serve at least two years of active duty before being allowed to consider offers from major-league sports. That's a compromise; Senate Armed Services Chairman John McCain (R-Ariz.) wanted to let the few grads go enough to go pro to be able to skip active duty and instead go into the reserves.

Top Line The measure would authorize \$634.2 billion for all national security programs, including \$8 billion not under the jurisdiction of the armed services panels. The measure would authorize \$605.5 billion for regular Defense Department budget, \$20.6 billion for national security activity at the Department of Energy, and \$65.7 billion in war funds, according to the House Armed Services Committee.

BY ROXANA TIROU

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News

GSA

GSA Announces Winners Of \$50B Alliant 2 LB Awards

The Nov. 17 award of the 10-year, \$50 billion Alliant 2 Large Business contract to 61 companies pits the largest incumbent Alliant Large Business contractors against 28 dynamic new entrants for some of the largest federal information technology orders.

Alliant 2 Large Business (Alliant 2 LB) is a governmentwide acquisition contract managed by the General Services Administration that is used by all federal agencies to buy a wide range of information technology services. Alliant 2 LB's predecessor — Alliant Large Business — has generated \$16.5 billion since fiscal 2009, according to Bloomberg Government data, and is eligible for new orders for another year and a half.

Of the 61 companies eligible to compete for new business at the task-order level on Alliant 2 LB, 33 are incumbents from the predecessor Alliant Large Business and 28 are newcomers. The remaining 21 companies had held slots on the predecessor contract will be locked out of task-order competition on Alliant 2 LB until 2027 if no further awards are issued.

Winners: Familiar Names It's likely that the biggest vendors on Alliant 2 LB will be the largest incumbents on Alliant LB. The 33 incumbents continuing work on Alliant 2 LB account for \$15.7 billion of the \$16.5 billion that has flowed through the vehicle. The top 10 incumbents alone won \$13.5 billion, or 82 percent, of Alliant 2 LB's spending obligations.

Those companies will compete against 28 entrants that have been awarded Alliant 2 LB contracts, including:

- Camber Corp. (now part of Huntington Ingalls)
- Dell Inc. (now part of NTT)
- By Light Professional IT Services Inc.
- DRS Global Enterprise Solutions Inc. (now part of Leonardo SpA)
- Maximus Inc.
- Sevatec Inc.

Half the Roster Cleared The three largest Alliant LB vendors that didn't make it onto Alliant 2 LB are EPS Corp. (\$155 million), Harris Corp. (\$146 million), and Macaulay-Brown Inc. (\$124 million). About \$336 million in spending went through the 17 other Alliant LB incumbents that do not hold Alliant 2 LB slots.

What's Ahead The shift to Alliant 2 LB from Alliant LB will play out differently than the transition of other governmentwide contract vehicles. This time, the GSA built in an overlap period of performance between the two vehicles.

The ordering period on Alliant Large Business contracts is set to expire April 30, 2019 — giving agencies

almost 18 months to place new orders and add work to existing Alliant LB orders before they have to shift new work to Alliant 2 LB.

More than one-third — 298 of 803 — of Alliant LB task orders are still active. Combined, they still have \$15.5 billion in remaining ceiling — beyond the \$9.7 billion that has already been obligated.

Once the inevitable Alliant 2 LB contract award protests are resolved, and a start date is firmed up, agencies will have the option of ordering through either Alliant LB or Alliant 2 LB until April 2019.

The GSA has yet to announce the awards for the \$15 billion Alliant 2 Small Business, but awards are expected to be finalized in the next 60 days, according to an agency announcement. Together, Alliant 2 LB and Alliant 2 SB have a total estimated ceiling value of \$65 billion.

By DANIEL SNYDER

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DOD

Service Contracts Come Into Congress's Crosshairs

Congress has ordered the Defense Department to establish guidelines to better evaluate the Pentagon's service contracts — the more than \$150 billion it spends on functions provided by people as opposed to purchased goods.

Although service contractors will be affected by several provisions in the final 2018 National Defense Authorization Act, they avoided one provision in the House bill they had dreaded: an attempt to impose caps on service contracts.

Though NDAA conferees didn't establish a single instrument to use to evaluate service contracts, they warned the Pentagon that they expect to see "improved discipline" in evaluating service contract requirements in the near future.

"(T)he conferees firmly believe that the Department's services contracting efforts would benefit from a far more rigorous and analytical approach than the Department has used so far," they wrote in the bill's joint statement of managers.

'Clear and Detailed' The final NDAA, a 2,427-page document released Nov. 9, included a provision that will require the secretaries of defense and of the military departments to analyze spending patterns and pro-

jected requirements for contracted services, to inform decisions regarding future contracts.

That section would require that the defense secretary report to Congress, with its annual budget request, “clear and detailed information on the amounts requested for contracted services.”

The final version of the bill also includes a Senate NDAA amendment that would mandate the use of a “justification requirement” to restrict the DOD’s use of certain labor-hour service contracts rather than contracts based on outcomes and performance. That provision also would mandate that the defense secretary file a report to Congress by April 1, 2018, on the merits of using outcome-based services contracts.

Long-Standing Concerns The Professional Services Council, which represents service contractors, took issue with some of the final NDAA provisions, saying the requirements are unnecessary.

“PSC believes there is considerable planning for services contracts already and shares the conferees’ concern that implementation of the planning provisions ‘may not be feasible at present, due to a number of significant organizational, business process, and data challenges,’ ” a PSC spokeswoman told Bloomberg Government in a written comment.

Government efficiency watchdog groups such as the Project on Government Oversight (POGO) have offered qualified support for the provisions in the final bill.

However, their support comes in the wake of long-standing concerns from POGO, the Government Accountability Office, and some in Congress over whether the Pentagon has a solid grasp of which services it’s buying each year — or needs to in coming years.

The Defense Department doesn’t always know how service contract funding has been spent, “and previously Congress hasn’t any applied pressure on DOD to tighten those purse strings,” Scott Amey, POGO’s general counsel, told Bloomberg Government in a written statement. “This year’s defense authorization bill is different, which is a great step, but let’s hope that Congress and DOD are interested in finding wasteful spending and not merely checking boxes. If it does the job, DOD is likely to save billions.”

GAO auditors also have taken Pentagon buyers to task for underreporting the extent to which contractors are providing services that are closely associated with inherently governmental functions, according to an October 2016 report, “a key review objective to help ensure that DOD has proper oversight in place.”

POGO took its criticisms of DOD one step further in a November 2014 letter from POGO Executive Director Danielle Brian to then-Defense Secretary Chuck Hagel. Brian claimed that officials in DOD’s personnel and readiness office had engaged in “a concerted effort . . . to willfully breach laws and congressional mandates to implement an improved service contract tracking system.”

‘Simply Unworkable’ A House NDAA provision to limit how much the Pentagon could spend on service contracts, which brought swift condemnation from service contractors, was scrapped during the conference process.

The provision would have mandated that the Pentagon’s services budget not exceed its services budget from 2010, not counting the amounts made available for DOD’s overseas contingency operations.

Industry reacted furiously.

“PSC strongly opposes arbitrary caps on service contracting spending because they hamstringing the Department’s ability to appropriately manage its total workforce in support of mission needs,” wrote PSC Executive Vice President and Counsel Alan Chvotkin in an Oct. 19 letter to the chairmen and ranking Democrats of the House and Senate Armed Services Committees.

“Changes in the services market since the 2010 budget was released would make implementation of such caps simply unworkable and create unintended, negative consequences,” Chvotkin wrote.

By SAM SKOLNIK

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DOD

Pentagon’s \$150B in Spending On Services Rouses Congress

Congress is seeking tighter control over the more than \$150 billion that the Pentagon spends each year on logistics, maintenance, health care, and other services.

The House wants the military to include the same amount of detail in annual budget requests for services as it does for weapons and other equipment, according to the latest version of the fiscal 2018 National Defense Authorization Act. The change could subject the spending to more influence by individual members of Congress.

The defense secretary would be required to submit along with the normal budget documentation, “information on services contracts that clearly and separately identifies the amount requested for each category of services to be procured for each Defense Agency, Department of Defense 10 Field Activity, command, or military installation,” starting in fiscal 2024, according to Section 851 of the draft bill.

More Data The provision for more detailed data is likely to have the most impact in the operation and maintenance (O&M) portion of the Pentagon’s annual budget request. Unlike the procurement or research development, test, and evaluation portions of the budget, which identify individual weapons systems or programs in a separate line item, the O&M budget lists amounts only by service branch. It then breaks them down into broad categories such as Navy sustainment (\$1.9 billion in fiscal 2018) or Army training support (\$618.2 million). About \$86 billion of the \$157 billion that DOD obligated for services in fiscal 2016 came out of the O&M budget, according to Bloomberg Government data. Year-to-date data suggest fiscal 2017 spending on services will be even higher.

The top O&M services contracts in fiscal 2016 were DOD’s three large health care contracts, followed by three major support services contracts: SeaPort Enhanced, Alliant Large Business, and Logistics Civil Augmentation Program IV. The Pentagon obligated \$4.6 billion on SeaPort Enhanced in fiscal 2016, more dollars than on any other single contract.

Detailed data will “support the validation of requirements for services contracts and inform the planning, programming, budgeting, and execution process of the Department of Defense,” according to the bill. The DOD’s planning, programming, budget, and execution (PPBE) process precedes final submissions to the White House in preparation for the president’s annual budget request to Congress. That process is already extremely detailed, highly structured, and lengthy. Adding these information requirements will only make the process longer and likely to require more data.

Congress noted in the explanatory statement for the bill that the Government Accountability Office recommended that “Congress consider requiring the department to budget for service contracting activities across the full Future Years Defense Program.”

BGOV’s Take Section 851 is well intentioned but will place an additional burden on contractors to provide data which the government should provide but often can’t, Professional Services Council CEO David Berteau said in an interview. Forecasting services requirements is difficult and trying to nail down the O&M requirements will take away the flexibility the military needs to execute its missions, he said.

One important byproduct of the policy changes will probably be more scrutiny by Congress. As Congress gains more insight into services spending, particular members may seek to increase or decrease amounts through the authorization and appropriations process. This is likely to insert more volatility and uncertainty into the whole defense budgeting process.

In theory, transparency is a good thing, and providing Congress with additional information on the often-opaque services contracting process in DOD is positive. With improved information, Congress may make better decisions on where DOD should and shouldn’t be spending its money.

However, what seems to underlie this provision is a relief by many in Congress that large amounts of money are being wasted in services contracting and that millions or even billions of dollars might be saved with tighter scrutiny. The reality is that the DOD requires many services to accomplish its missions. While contracts for services may not be as tangible as a purchase of an F-35 or an aircraft carrier, they are no less vital for national security. Equipment and facilities must be maintained, and troops must be fed and housed. Contractors perform much of this work.

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Information Technology

Six Agencies Lose Ground on IT Performance in Latest Scorecard

Twice as many federal agencies regressed as improved in their efforts to acquire, manage, and implement information technology, according to the latest Federal Information Technology Acquisition Reform Act scorecard, released Nov. 14.

Rankings dropped for six of the 24 agencies measured: the departments of Homeland Security, Energy, Justice, Transportation, and Housing and Urban Development; and the Environmental Protection Agency. Rankings rose for the Education Department, Small Business Administration, and Office of Personnel Management.

The biggest struggle for several agencies may be software licensing. Seventeen of the 24 agencies failed to show that they have an inventory of their software licenses, giving them an “F” in implementing changes encompassed in the Making Electronic Government Accountable By Yielding Tangible Efficiencies (MEGABYTE) Act of 2016. However, the Nov. 14 scorecard marked the first time MEGABYTE evaluations were reflected in agencies’ overall scores.

Two agencies — the Defense Department and the Department of Transportation — received an overall failing grade. That’s double the number from the previous FITARA scorecard, issued in June, when DOD rated an “F+.”

The overall grade even slipped — albeit slightly, to an “A-” — for the U.S. Agency for International Development, the first agency to receive an overall “A” in June.

Federal agencies have taken steps to improve the management of IT acquisitions and operations, the Government Accountability Office said in a report released Nov. 15. Agencies had fully implemented about 56 percent of 800 or so related GAO recommendations made between fiscal 2010 and 2015, the report said.

However, a GAO official told the House Committee on Oversight and Government Reform on Nov. 15 that more information needs to be migrated to the cloud. When Rep. Greg Gianforte (R-Mont.) asked how much data has been moved to the cloud, David Powner, the GAO’s director of IT management issues, said he didn’t know, but that 4 percent to 5 percent of watchdog’s IT budget was dedicated to it.

BY DANIEL ENNIS

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Air Force

Secret \$97 Billion Bomber Praised By Pentagon Inspector General

The Air Force’s classified next-generation bomber program began with a solid plan for meeting cost goals and war fighting requirements, which include an option to fly unmanned missions, according to a newly declassified audit from the Pentagon’s inspector general.

The challenge will be sticking to that plan.

The early praise for what the Congressional Budget Office in a new estimate said is a \$97 billion B-21 program came about a month before the Air Force selected Northrop Grumman Corp. over a rival team consisting of Boeing Co. and Lockheed Martin Corp. for the bomber contract in late 2015.

While big-ticket weapons systems such as the B-21 frequently end up with significant cost increases and production delays, in the initial stages the Air Force was cited for its “comprehensive acquisition strategy and risk-management process to support a cost-effective program,” according to the audit. The program had “clearly defined requirements to ensure” the war fighter’s “needs are being met,” it added.

That initial assessment is no guarantee the B-21 won’t encounter serious cost, schedule, and performance problems as system development continues, with the service seeking to declare an initial operating capability by the “mid- to late 2020s,” Global Strike Command spokesman Joe Thomas said in an email. The aircraft’s first flight “along with specific details of the technical capability of this platform, is protected by enhanced security measures,” he added.

The CBO’s \$97 billion estimate includes \$69 billion in production costs, though the office said the program’s secrecy made it difficult “to generate an independent estimate of its costs.”

The previously classified audit was released this month under a Freedom of Information Act request after the service made major redactions, adding secrecy to a program critics such as Sen. John McCain (R-Ariz.), chairman of the Armed Services Committee, have complained was already excessively classified.

The inspector general’s report also disclosed details about the B-21’s expected capabilities. In addition to being able to carry and deliver a modified B-61 nuclear bomb two years after reaching its initial operating capability stage, the bomber will also be capable of unmanned operations.

Because the audit is redacted, it could not be determined whether the service allowed only favorable conclusions to be released while keeping any criticism cloaked in secrecy. The Air Force, for example, released the conclusion that the service had a detailed contracting strategy but blacked out a paragraph that preceded the sentence “under this approach the Federal Government assumes some of the research and development risk.”

The praise also means the inspector general’s assessment will come under scrutiny if the program veers off track, in costs or performance, as it proceeds.

Second Assessment Still, the conclusions released mark the second time an outside group has praised the service’s acquisition approach. The Government Accountability Office, in a February 2016 decision that rejected a protest filed by Boeing and Lockheed Martin against the Northrop award, praised the selection process.

Northrop Grumman’s “significantly lower proposed prices” for initial production “created a near-insurmountable obstacle” to Boeing “achieving best-value” or to “demonstrating prejudice” in the Air Force’s calculation of realistic costs, the GAO said.

The Pentagon’s inspector general also said the program office “incorporated adequate processes to de-

velop accurate cost positions and funding requirements” and the review system set up with Pentagon cost analysts “ensures appropriate oversight, accurate development and effective approach for funds management,” the audit said. The service also developed a “detailed contracting strategy” and “adequately developed and incorporated a process to develop an accurate cost position and program schedule,” the audit said.

Despite McCain’s criticism of excessive secrecy, Congress has supported the program, approving \$2 billion in the fiscal 2018 policy bill the Air Force requested to ward added staffing for Northrop Grumman, software development, and producing detailed engineering drawings.

BY TONY CAPACCI

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DOD

Automatic Contract Close-Out Helps DOD Face ‘Challenge’

Efforts over the past decade to improve procurement data standards used in Defense Department contracts have presented “a massive challenge,” a Pentagon official said at a Coalition for Government Procurement conference Nov. 16 in Falls Church, Va.

Devising a standard format for contract numbers and order numbers involved making changes to finance, accounting, and entitlement systems throughout the agency — not to mention the Pentagon’s contracts systems, said LeAntha Sumpter, the Pentagon’s deputy director for program development and implementation.

The systems have been 71 percent deployed since the process began in 2008, Sumpter said.

Her office has also been able to speed up contract close-outs with a new capability that makes the process automatic, Sumpter said. DOD has closed more than 20,000 contracts in the two years since this process debuted, she said, “and we’re hoping to increase those numbers exponentially.”

The procurement data standard “defines the minimum requirements for contract writing system output to improve visibility and accuracy of contract-related data, to support interoperability of DoD acquisition systems and to standardize and streamline the procure-to-pay business process,” according to the Pentagon’s defense procurement and acquisition policy website.

At the same time, the Pentagon’s regulatory overhaul task force is trying to determine how to justify “ever single [Defense Federal Acquisition Regulation Supplement] clause on the books,” Sumpter said. “The White House has mandated we take a fresh look at everything.”

DOD, like every other agency, is required to delete two regulations for every one it adds, in response to an executive order President Donald Trump signed this year. “So that’s put us in an interesting dilemma, i

terms of how we keep that equation balanced,” Sumpter said.

By SAM SKOLNIK

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DOD

DOD Will Be Allowed to Conduct Its Own Security Clearances

The Pentagon will get control over security clearances of its employees and defense contractors under the final 2018 defense authorization measure.

The provision in the massive defense policy bill (H.R. 2810) is designed to reduce a governmentwide security clearance backlog of 700,000.

That backlog has impeded recruitment — both in the government and among contractors — of qualified personnel who need high security clearances before they can handle sensitive information.

“The current situation of massive clearance delays has serious adverse effects on national security and must be addressed in order to avoid any further damage” to the Defense Department’s readiness, negotiators of the defense bill wrote in an explanatory statement accompanying the conference report.

The measure would require the defense secretary to take steps to allow the Defense Security Service to conduct, before Oct. 1, 2020, all personnel background and security investigations of those deemed eligible for security clearances by the Defense Department’s clearinghouse known as the Consolidated Adjudications Facility.

The Defense Security Service would take over all Defense Department-related background checks from the year-old National Background Investigations Bureau, which is part of the Office of Personnel Management. Defense Secretary James Mattis signed off in August on a plan that would shift the clearance process to the DSS.

About 4.1 million people hold security clearances of varying levels, according to the Office of the Director of National Intelligence. The Defense Department has made the case for continuous evaluation of security clearance holders in real time rather than waiting until clearance renewal is required years later. The goal: to spot potential problems, such as financial trouble or addiction, that would be red flags for susceptibility to bribery or blackmail.

The Defense Department “is already paying over \$1.0 billion annually for background investigations; the backlog exceeds 700,000 cases and is growing at a rate of 10,000-20,000 per month,” negotiators wrote in the explanatory statement.

Some defense companies have reported that more than 75 percent of their requests for investigations have been delayed for more than 18 months and another 10 percent have been in process for more than 24 months, according to the Aerospace Industries Association.

The defense authorization measure, which cleared the Senate by voice vote Nov. 16, is awaiting the president’s signature.

By ROXANA TIRON

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Conflicts of Interest

Lockheed Exec Draws Senators’ Ire in Hearing’s Testy Exchange

A testy exchange about potential conflicts of interest dominated a Lockheed Martin executive’s Nov. 16 hearing in front of the Senate Armed Services Committee.

Asked seven times by two senators whether he would seek a waiver from his required two-year recusal from matters pertaining to his former employer, John Rood, senior vice president of Lockheed Martin International and a nominee for undersecretary of defense for policy — the Defense Department’s No. 3 post — failed to give a yes-or-no answer.

“I plan to live very scrupulously by the ethics agreement I’ve signed with the Office of Government Ethics,” Rood said in his third response to the question from Sen. Elizabeth Warren (D-Mass.).

“I’m going to take that as a ‘no,’” Warren said.

“I will work with the General Counsel’s office to avoid involvement in any particular matter [related to Lockheed Martin],” Rood said in a later iteration of his answer.

“We’re going to give you this questioning in writing because obviously you’re ducking the answer here,” Sen. John McCain (R-Ariz.), the committee chairman, told Rood.

McCain has raised concern over the number of defense contractor executives nominated to Pentagon posts. He warned during a Nov. 2 hearing that he would not support any further major defense contractor nominees for Pentagon posts beyond Mark Esper, whom the Senate confirmed Nov. 15 as Army secretary. Esper served as a top lobbyist for Raytheon.

“Mr. Rood, I suggest you answer the question or you’ll have trouble getting through this committee,” McCain said Nov. 16.

By DANIEL ENNIS

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Army

Senate Confirms Ex-Raytheon Executive as Army Secretary

The Senate on Nov. 15 confirmed Mark Esper, a former Raytheon vice president for government relations, to be secretary of the Army, by an 89-6 vote.

Senate Armed Services Committee Chairman John McCain (R-Ariz.) expressed concerns during Esper's confirmation hearing Nov. 2 about the number of nominees from the defense industry to fill posts in the Defense Department. McCain said he wouldn't support further nominees with that background.

Esper told McCain he would recuse himself from matters relating to Raytheon for two years.

By CATHERINE DODGE

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Ethics

Governor Shows Will to Run Puerto Rico as Power Chief Quits

The resignation of the head of Puerto Rico's power agency made clear that Governor Ricardo Rossello wants to remain in charge of the battered island's recovery.

As Congress on Nov. 17 received a request for aid to rebuild after Hurricane Maria, CEO Ricardo Ramos Rodriguez quit after weeks of criticism over a \$300 million no-bid reconstruction contract. He gave no reason for his immediate departure in the terse 53-word statement from the Puerto Rico Electric Power Authority (PREPA), but Rossello made clear his resignation was welcomed.

"There was a series of distractions, and the decision was made to go in a different direction," Rossello said.

The upheaval is part of an effort to keep aid flowing to the U.S. commonwealth of 3.4 million people, which was driven into bankruptcy in May by its unpayable \$74 billion public debt. Hurricane Maria ravaged the island in September, and about 168,000 residents have fled as the lack of electricity has stymied the recovery. The power authority was generating only about 40 percent of the electricity needed as of Nov. 17.

With many still lacking basic services and its economy slowed to a halt, prices of Puerto Rico's benchmark bonds have tumbled to fresh lows as investors speculate that any payouts will be less than anticipated. The commonwealth is considering suspending debt-service payments for five years, a lawyer for the territory's federal oversight board said last week, in the first indication of how the devastation caused by Hurricane Maria will affect creditors.

PREPA, which is also operating in bankruptcy, has floundered in the face of the disaster that destroyed its dilapidated grid.

Ramos last week faced intense questioning before a Senate committee about a \$300 million contract PREPA awarded to a little-known company based in Whitefish Mont. — Whitefish Energy Holdings — to fix the grid immediately after the storm. It was anticipated that federal emergency funds would cover the bill. The company had few obvious qualifications to perform the work, and the contract had a provision that prohibited audits.

The deal, which has since been canceled, became a flashpoint.

'Death Match' After the contract was revealed, the fiscal control board that Congress installed as a condition of allowing the bankruptcy tried to appoint its own emergency manager for PREPA. The governor's administration contested the move in court, arguing that it impinged on Puerto Rico's sovereignty. A judge struck down the proposed appointment but urged both parties to work together rather than fight a "death match in which the winner takes all."

Rep. Rob Bishop (R-Utah), chairman of the House Natural Resources Committee, lectured Rossello at a Nov. 14 hearing on the need to close what he called a "credibility gap."

Puerto Rico can scarcely afford distrust in Washington: The commonwealth has asked lawmakers for \$9 billion in federal aid it says it needs to rebuild. The electric utility alone needs \$18 billion, Rossello said in a letter to President Donald Trump released Nov. 13.

But four days later, the White House asked Congress for a \$44 billion aid package that also includes funds for Texas and Florida. Opponents rushed to call it inadequate.

Dark Nights "The Trump administration's request does not come close to meeting the needs of victims of recent natural disasters," Senate Appropriations Committee Vice Chairman Patrick Leahy (D-Vt.) said in a news release. "This is wholly inadequate and downright insulting, especially for the people of Puerto Rico who eight to ten weeks after Hurricanes Irma and Maria, are struggling to get the lights back on and are looking to Congress for help."

However, White House Press Secretary Sarah Sanders said the assessment of Puerto Rico's situation isn't complete. The administration anticipates making additional requests for funding, she said.

Emails and phone calls to representatives of Rossello and Puerto Rico's nonvoting member of Congress weren't returned Nov. 17. Jose Luis Cedeno, a spokesman for the fiscal control board, declined to comment on Ramos's resignation or the size of the aid package.

In a government statement confirming Ramos's resignation, Ernesto Sgroi Hernandez, the president of the governing board, said the management changes would "bring best-in-class thinking to the future of PREPA while at the same time continuing the critical restoration and recovery efforts."

Engineer Justo L. Gonzalez Torres is set to be PREPA's interim executive director while officials search for a permanent replacement. He's the director of power generation at the agency, where he's worked since at least 1998, and holds a bachelor's of mechanical engineering from the University of Puerto Rico.

Superstorm Sandy A new transformation advisory council, designed to provide guidance to the PREPA board and management team, will be led by David Owens, a former executive vice president of the Edison Electric Institute who was involved in the power industry's response to Superstorm Sandy in 2012, and served as a formal liaison to the Federal Emergency Management Agency.

San Juan Mayor Carmen Yulin Cruz said in a telephone interview that Ramos's departure "is a first step to making sure that there is a plan that is feasible, that is doable and that is credible."

Long after the Whitefish affair reached Washington, Ramos defended its hiring. But then Rossello stepped in to cancel the contract. Asked whether he'd lost confidence in Ramos, he demurred, saying there were active investigations into the matter.

The change at the top was foretold, said Ramon Cruz, a former member of the Puerto Rico Energy Commission, the regulatory agency that oversees PREPA. "We could see this coming," Cruz said. "There are still many questions that remain unanswered."

— With assistance from Ezra Fieser, Naureen S. Malik, Toluse Olorunnipa, Erik Wasson, and Jennifer A. Dlouhy.

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Ethics

Puerto Rico Utility Admits Error As Senators Blast Price-Gouging

Puerto Rico's utility acknowledged that it made some missteps in issuing contracts to help it rebuild its grid, even as it defended its choice of two untested companies to lead the effort.

Ricardo Ramos, the executive director of the Puerto Rico Electric Power Authority (PREPA), faced questions in Congress about the utility's sole-source contract for \$300 million with Whitefish Energy Holdings, the rates Whitefish charged for its work, and why the utility didn't tap mutual aid from utilities on the mainland to help restore its grid after Hurricane Maria destroyed it.

"It's one thing to be responsive in the immediate aftermath of a hurricane, it's another thing to be engaged in something that we would all call gouging of the taxpayer," Senate Energy and Natural Resources Committee Chairman Lisa Murkowski (R-Alaska) said at a hearing Nov. 14. "The recovery began when that mutual aid" was finally tapped, she said.

"You can certainly understand that frustration," she told Ramos.

PREPA also ignored the advice of its own lawyers in inking that contract, according to documents released by the House Natural Resources Committee.

Ramos told the Senate panel that the utility couldn't use mutual aid from public power entities on the mainland because it couldn't provide them with housing, food, generators, or other logistics. It needed companies that could provide all of those, too.

"I chose to contract with Whitefish because my priority was securing the immediate assistance that we needed to begin restoring power as quickly as possible to our most critical customers," he said. "I needed people who were self-contained."

Puerto Rico was hit with two hurricanes in September. The first, Irma, left a million residents without power. Then, Maria made landfall Sept. 20, wiping out 80 percent of the island's electrical grid, causing everyone on the island to lose power. Recovery in major metropolitan areas has progressed slowly; remote parts of the island are still without electricity. Although PREPA had restored power to 49 percent of the island as of Nov. 14, it says it will be a reach to get 95 percent of its customers reconnected by the end of the year.

The slow pace of recovery has prompted criticisms of the federal response and the local utility's decisions. PREPA issued an initial contract to Whitefish, which had just two employees and a headquarters in Whitefish, Mont., the hometown of Interior Secretary Ryan Zinke. Cobra Acquisitions LLC, a subsidiary of Mammoth Energy Services Inc., got its contract next for similar work rebuilding the transmission and distribution system.

Clear-Cut Case Sen. Maria Cantwell (D-Wash.) called the Whitefish deal a clear-cut case of price-gouging. Utilities from across the country were offering help, she said, and "I guarantee they weren't charging Whitefish rates to go."

Lawmakers criticized PREPA for allowing Whitefish to charge as much as \$231 an hour — and Mammoth \$285 — for workers on site in Puerto Rico, according to documents released Nov. 14 by the House committee. However, while lawmakers said that was much greater than utilities would charge under mutual-aid agreements, PREPA provided documents showing that other companies contacted proposed charging similar or higher hourly rates.

Asked by Cantwell about any possible corruption, Ramos said, "I don't know of any individuals who may have received a kickback from Whitefish."

And Puerto Rico had complaints of its own, citing a slow response from the U.S. Army Corps of Engineers, which is responsible for power restoration after storms.

"I wasn't satisfied with the level of urgency that the Corps of Engineers had for picking up the energy grid," Puerto Rico Governor Ricardo Rossello told the House Natural Resources Committee. "We were told they were going to start immediately and that it would take 45 days. More than 30 days afterward, we only had seven crews from the Corps."

— With assistance from Ari Natter.

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Ethics**Puerto Rico's Other No-Bid Contractor Says It's No Whitefish**

Even though it's best known for fracking and only been in the business of restoring downed power lines for a few months, Mammoth Energy Services Inc. got a no-bid, \$187 million contract to restore electricity to hurricane-ravaged Puerto Rico.

That's drawn the attention of skeptical U.S. lawmakers who helped lead the charge to get canceled a \$300 million contract awarded to Whitefish Energy Holdings LLC. Mammoth executives bristle at any comparison to Whitefish and say the company — which saw its stock surge 19 percent when it landed the job — is up to the task.

When it brings in oil drilling equipment in far-flung locales such as Alberta, it also trucks in houses, food and, even, recreational outlets for the oil-field workers. That logistics work was the key to getting the contract with the Puerto Rico Electric Power Authority (PREPA).

"We're a substantive organization with 1,400 employees," Mark Layton, Mammoth's chief financial officer, said in an interview. "What we went to PREPA with was a turnkey solution — personnel, equipment, security, as well as housing — to go in and supply power."

Ricardo Ramos, the executive director of PREPA, which awarded the two contracts, appeared Nov. 14 before a Senate committee to discuss the recovery efforts. No one from Mammoth was scheduled to testify.

In testimony submitted in advance of the hearing, Ramos acknowledged missteps in its contracting but defended the choice of the two companies. They were the only ones that offered immediate service without requirements such as a guaranteed payment or logistical support for workers.

"In retrospect, there are some steps in our contracting process with Whitefish that we could have done better," Ramos said.

Under its contract with PREPA, Mammoth is now housing workers on full-service barges berthed offshore. The company also has two 180-foot "fast boats" set to transport up to 72 people and supplies from Miami three times a week, and one DC-9 aircraft. Each of the 250 skilled linemen brought in to work on rebuilding the power lines — and the equipment they need to do their work — are being billed at \$4,000 a day.

The company announced in a securities filing Nov. 14 that it had dropped a clause in its PREPA contract that would have thwarted a federal audit of its work and had drawn criticism from U.S. lawmakers.

Mammoth agreed to allow the federal government to audit books, documents, and records related to its contract to help restore Puerto Rico's electric service which was damaged during Hurricane Maria, according to a securities filing Nov. 14. The change was initiated by the company, said Don Crist, its director of investor relations.

There are other reasons for skepticism about the company winning the contract. Mammoth just purchased two small companies in the electricity business this year and has no experience with a project this big. The \$187 million contract with PREPA is more than the company's total revenue in the third quarter.

The Puerto Rico Energy Commission, the regulatory agency that oversees PREPA, opened an investigation into the utility's response to the storm in October, including the contracts for Whitefish and Mammoth, according to a person familiar with the review. The commission is expected to take more action soon, said the person, who asked not to be identified because they weren't cleared to discuss the matter publicly.

Mammoth had some things going in its favor, including access to capital and experience operating in difficult conditions, said Matthew Cordaro, a former utility executive and trustee of the Long Island Power Authority. But rebuilding an electric grid serving 3.4 million people is a massive undertaking, and there are other companies with much deeper experience with a task of that size, he said.

"It's just, it's taking a chance," he said. "How good are these guys?"

Puerto Rico was hit with two hurricanes in September. The first, Irma, left a million residents without power. Then, Maria made landfall Sept. 20, wiping out 80 percent of the island's electrical grid, causing everyone on the island to lose power. Recovery in major metropolitan areas has progressed slowly; remote parts of the island are still without electricity. The utility had restored power to 49 percent of the island as of Nov. 14.

The slow pace of recovery has prompted criticisms of the federal response and the local utility's decisions. PREPA issued the initial contract to Whitefish, which had just two employees and a headquarters in Whitefish, Mont., the hometown of Interior Secretary Ryan Zinke. Cobra Acquisitions LLC, a subsidiary of Oklahoma City-based Mammoth, got its contract next for similar work rebuilding the transmission and distribution system.

Part of the problem for PREPA was finding contractors willing to work on the island after it had declared bankruptcy. While utilities on the mainland said they were ready to help, many were "afraid of the question of how are we going to get paid," Andy Techmanski, the head of Whitefish, said in an interview last month.

The 52-page contract with Cobra, signed Oct. 19, includes an advance payment of \$15 million along with daily rates for 250 linemen, 104 members of a security team, 50 members of a logistics team, and 30 members of a management team for a total of \$187.5 million.

The company sent in two barges, both with their own water and sewer services and electricity generators. It pledged to send in cranes, pressure diggers, 60 pickup trucks, and five helicopters.

The Puerto Rico grid "was not ready for a storm like this by any means," and Mammoth — an unusual choice as a contractor — has its work cut out for it, said Mark McGranahan of the Electric Power Research Institute. He called the \$4,000 daily rate high but not outrageous given the circumstances.

In addition to PREPA's contracts with Whitefish and Cobra Services, the Army Corps of Engineers awarded a \$240 million contract to Fluor Corp. and a \$40 million contract to PowerSecure, a subsidiary of utility Southern Co., to repair the grid. The Army Corps announced Oct. 29 that it intends to increase Fluor's contract to \$840 million.

Mammoth CEO Arty Straehla described the process of winning the contract in a Nov. 2 quarterly earnings call.

“We went from meeting to meeting talking with FEMA officials, talking with the governor’s officials, talking with officials from PREPA,” Straehla said. “We had a fully self-contained plan that nobody else has had put together for them. That includes having berthing barges, that includes housing our folks.”

FEMA officials distanced themselves from that version of events, as they had after the Whitefish controversy initially broke.

“FEMA is not involved in the PREPA contracting selection process,” said FEMA spokesman Ron Roth. “Questions regarding the awarding of PREPA contracts should be directed to PREPA.”

PREPA did not respond to a request for comment.

Mammoth went public in October 2016, telling its investors that its primary business was hydraulic fracturing — a technique that uses pumped water to free natural gas and oil trapped in rocks underground. In its offering document, the company also highlighted its “remote accommodation business,” which it said included 1,008 rooms in modular camps in Alberta.

The company, which also does drilling services and sand production, has grown rapidly, doubling its revenue from the second to third quarters of 2017.

The company took an interest in the electricity business this summer, spending \$8 million to acquire two companies, Five Star Electric and Higher Power Electrical. It said the new business line would insulate it from the volatile commodities sector. It foresaw a boom in infrastructure spending, including for electricity transmission and distribution.

Analysts, including James Wicklund of Credit Suisse Group AG, approved of the deal, which they say will be successful regardless of the Puerto Rico effort. The company has 58 fleets working in the U.S., each expected to generate \$750,000 in annual revenue at a 15 percent margin, he said.

In his note to investors following the company’s third quarter earnings call, Wicklund cited the Whitefish controversy and said he did not think a similar fate awaited Mammoth.

But, “political risk is impossible for us to quantify,” he wrote.

— With assistance from Ari Natter.

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Defense

Freeze-Dried Plasma From France May Get OK for U.S. Soldiers

The Pentagon may be about to win its years-long push to be able to use freeze-dried plasma from France to treat battlefield injuries.

The Defense Department, under the compromise measure, would be able to ask the Food and Drug Administration to expedite development of medical products to prevent deaths on the battlefield.

“This freeze-dried plasma is the only thing that keeps somebody from bleeding to death,” Rep. Mac Thornberry (R-Texas) told the House Rules Committee on Nov. 13. “And that is how most people die on the battlefield, is they bleed out. It was out of sheer frustration for troops bleeding out on the battlefield that brought this provision.”

The legislation (H.R. 4374) is intended to resolve objections several lawmakers and the Department of Health and Human Services lodged after Armed Services Committee members wrote into the annual military policy bill (H.R. 2810) permission for the Pentagon to bypass the FDA and approve its own medical products.

The provision in the defense authorization legislation forced the FDA to come to the table to negotiate the new bill, said Rep. Adam Smith (D-Wash.).

“The Defense Department tried to do a work-around with the FDA and they have been stiff-armed for 10 years,” Smith said.

Since 1994, the French military has used plasma from the French Centre de Transfusion Sanguine de Armees. It isn’t approved by the FDA, and there isn’t yet a comparable American-made product.

Vascular Solutions entered a deal in 2014 with the U.S. Army Medical Materiel Development Activity to develop freeze-dried plasma for the U.S. military, the sole such U.S. product. The Minneapolis-based company submitted its product, named RePlas, for initial FDA approval last year. Teleflex Inc. bought Vascular Solutions this year. Once the FDA approves RePlas, the military would have access to U.S. developed freeze-dried plasma.

Freeze-dried plasma is a dehydrated version of plasma that replaces the clotting factors lost in blood. Unlike traditional frozen plasma, it doesn’t need roughly 45 minutes to thaw, and battlefield medics don’t need special equipment to keep it frozen and to thaw it correctly, according to the Military Health System website.

The battlefield biologics bill was introduced Nov. 14 by House Energy and Commerce Chairman Greg Walden (R-Ore.).

— With assistance from James Rowley.

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Competition

IRS Can Use Tax Return Information To Disqualify Contractors, Rule Says

Tax return information can stand between a contractor and an Internal Revenue Service contract award, according to a Treasury Department interim rule published Nov. 16 in the Federal Register.

The interim rule adds a “tax check requirement” to the Department of the Treasury Acquisition Regulation and outlines the policies and procedures to perform it.

The Consolidated Appropriations Act, since fiscal 2012, has prohibited the federal government “from using appropriated funds to enter into a contract with a prospective contractor unless the prospective contractor certifies in writing that it has not been notified of any unpaid Federal tax assessment,” according to the rule.

An offeror that is shown to be delinquent may provide a contracting officer with documentation demonstrating a paid-in-full tax status, or showing that an approved payment agreement has been reached, the interim rule said.

The Treasury Department is accepting comments for 60 days, but the interim rule takes effect immediately.

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GSA

\$2.5 Billion for Call Centers May Move to GSA Schedules

The General Services Administration is considering shifting spending from USA Contact, an existing multiple-award contract for call centers, to a new Special Item Number (SIN) under the GSA’s Schedule IT-70, according to an amendment released Nov. 14.

USA Contact’s follow-on contract, which Bloomberg Government is calling USA Contact II, will continue to provide the GSA’s Office of Citizen Services with a wide range of automated and manual customer support for responding to inquiries about the federal government. The contract covers all functions associated with receiving and responding to inquiries and providing information through telephones, telecommunications devices for the deaf, email, postal mail, and the internet.

The nine USA Contact contract holders have generated about \$800 million since fiscal 2008. The biggest winners have included CSRA Inc. (\$251 million), DXC Technology Co. (\$227 million), and General Dynamics Corp. (\$135 million).

What’s Ahead Bloomberg Government reported in April that the government had two options for the re-compete contract: maintain the status quo, or consolidate. The November announcement indicates that the agency prefers consolidating the call center orders onto an existing vehicle.

What does that mean for contractors? If the GSA officially decides to shift spending to a new SIN — to be called Contact Center Solutions (CCS) — under the GSA’s Schedule IT-70, incumbents could be at a disadvantage because there will be more competition at the order level. There are more than 4,000 contract holders under Schedule IT-70, all of which — in addition to any new companies that have the option to onboard to IT-70 and register under the new CCS SIN — would then be eligible to compete against incumbent contract holders for future orders.

Eight orders totaling \$254 million are set to end after the USA Contact order expiration date March 1, 2018, according to Bloomberg Government data.

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DOD

Pentagon Seeks Industry Input On Accelerating Cloud Adoption

The Defense Department wants industry to help it accelerate the adoption of cloud services across agencies and military services.

The Pentagon is seeking cloud provider input “on how to best approach and structure the planned solicitation to acquire a modern enterprise cloud services solution that can support unclassified, secret, and top secret information” both within and outside of the continental U.S., according to an Oct. 31 request for information. Although the RFI calls for feedback from multiple vendors, it appears directed toward a single indefinite-delivery/indefinite-quantity contract.

The initiative will operate under the direction of the Cloud Executive Steering Group (CESG), an offshoot of the Defense Digital Service, and will occur in two phases, according to a Sept. 13 memo.

In the first phase, the Pentagon will use a tailored acquisition process to select a best-in-class enterprise cloud solution able to meet a series of demanding requirements. In the second phase, the CESG will begin migrating select defense agencies to the chosen solution with the intent to “operationalize its mission using the security, software, and machine learning capabilities that cloud technology provides.”

To help industry respond effectively to the RFI, the CESG released a series of considerations that lend insight into the solution desired:

- Must offer infrastructure and platform as a service.
- Must provide a tactical edge to the war fighter by extending from the homefront to austere, communications-poor environments.
- Technical parity with commercial cloud solutions.
- Expertise managing facilities and infrastructure at higher classification levels.
- Ability to provide in-depth technical analysis of the current environment, migration support, change management, and training services.

As part of the tailored acquisition process, the Pentagon is prepared to revise existing policies and federal regulations perceived as barriers to implementation. It’s likely that one of CESG’s main goals with the RFI is to gather industry suggestions about the specific policies and regulations that present the greatest obstacles. A more streamlined approach is expected to draw favor from commercial cloud providers, such as Google and Amazon Web Services.

However, some industry groups, such as the Coalition for Government Procurement, have been critical of DOD's plan to waive existing acquisition regulations in pursuit of a more commercial approach: "The RFI's references to law and policy barriers for securing anticipated cloud services and its questions related to how DoD can alter its process to accommodate a potential supplier... raise serious concerns related to the 'Balkanization' of the procurement process into multiple, product centric processes."

A dollar figure has not yet been attached to the contract, but based on the size of recent DOD cloud awards and buy-in at the deputy secretary level, Bloomberg Government anticipates it could be worth \$500 million or more. Bloomberg Government expects the request for proposals to be issued in January or February of 2018.

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Competition

Health Agency to Compete Up to \$2.5 Billion in Contracts

The Defense Health Agency, created in 2013 to oversee information technology, procurement, facility management, and other support services for military health programs, released its industry forecast, including 208 contracting opportunities.

Of that, 135 contracts worth at least \$1.18 billion and as much as \$2.5 billion in orders have yet to release a final request for proposal and will be competed in fiscal 2018.

The anticipated values span from about \$500,000 to more than \$250 million. The most common range is between \$2 million and \$5 million, with 57 contracts.

Contract Details The three largest opportunities would each exceed a \$50 million minimum anticipated value.

The Reserve Health Readiness Program II for Medical/Dental Assessment Services has an anticipated value of more than \$250 million. The incumbent contract ends in August 2018 and is held by Logistics Health Inc. The contract, with a ceiling of about \$750 million, has transactions totaling \$632 million since June 2013. DHA expects to release a request for information for the five-year contract by the end of February.

DHA plans to begin the competition for the Health Information Technology program for network engineers and specialists by Jan. 1, 2018. The task order, which was competed through Alliant Large Business, has a value of \$58 million and expires in May 2018. It has generated \$53 million since October 2012 for incumbent Apptis Inc. The five-year re-compete will have a similar value with some potential for an increase as its expected value ranges from \$50 million to \$70 million.

Another HIT program, Defense Health Services Systems Medical Logistics Division/Defense Medical Logistics Standard Support (DHSS MLD/DMLSS) Development and Sustainment Support, has a potential value between \$50 million and \$75 million. CACI International Inc. holds the incumbent task order, which was competed through Chief Information Officer Solutions and Partners 3. The ceiling is \$62 million and since June 2015, DHA has awarded CACI \$56 million in obligations. The task order ends in July 2018, and DHA expects to release the request for proposals for the three-year contract on March 1, 2018.

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Competition

Six Spots May Be Open on \$900M Medicare Outreach Contract

The Centers for Medicare and Medicaid Services is offering as much as \$900 million over seven years for help launching new outreach and educational campaigns, releasing a request for proposals package Oct. 26.

Four to six vendors have the opportunity to win advertising work through the multiple-award contract that's set to begin in September 2018.

The statement of work for the indefinite-delivery/indefinite-quantity contract highlights the following required services:

- Proposing a comprehensive campaign strategy and innovative tactics to reach target audiences and motivate behavior change.
- Designing and producing materials.
- Coordinating all facets of media planning and buying on behalf of CMS.
- Executing data-driven digital advertising.
- Managing social media accounts.
- Developing and executing multifaceted public relations campaigns.
- Developing qualitative and quantitative measures to track and evaluate the effectiveness of all national campaign programs.
- Analyzing data sets for direct outreach activities.

CMS has a tight schedule to reach its goal of starting the contract in less than a year. Interested vendors must inform the agency of their intent to submit a proposal by Nov. 29. Proposals are due by Dec. 6, with oral presentations to follow in March 2018 and awards made Aug. 31.

About \$451 million has been obligated since September 2011 through the incumbent multiple-award contract, which had five contract holders that are now all parts of larger advertising agencies: CMGRP Inc. (\$273 million); Porter Novelli Public Services Inc. (\$117 million); Ketchum Inc. (\$44 million); Fleishman-Hillard Inc. (\$9 million); and Ogilvy Group LLC (\$7 million).

CMS has spent most of its advertising money through that MAC — \$281 million of the \$330 million it spent on advertising agencies since fiscal 2014 — according to data compiled by Bloomberg Government.

Small businesses with success in the CMS advertising space include Elevation Ltd., ECU Communications LLC, and Sage Communications LLC, according to BGOV data.

By KATRICE EBORN AND KEVIN BRANCATO

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Air Force

Air Force Wants \$500 Million 'Anti-Jam' Satellite Comms System

The Air Force Space Command's Space and Missile Systems Center is seeking contractor feedback on developing a satellite communications capability that can't be jammed by an adversary, according to a Nov. 13 request for information.

The Protected Tactical Enterprise Service (PTES) will "provide worldwide, anti-jam, Low Probability of Intercept (LPI) communications for tactical warfighters," according to Air Force budget documents. The Air Force plans to spend about \$479 million through fiscal 2022 to develop the system, requesting \$18.1 million for the system in fiscal 2018.

The Air Force intends to award a single contract to develop and field the PTES system. The decision to begin production and deployment on the system is expected in the third quarter of fiscal 2022, and operational capability is expected in 2023.

Industry day slides released Nov. 13 indicate that the system will consist of three components: a hub, a mission management system, and a key management system. The hubs will be deployed at the Defense Information Systems Agency and Defense Enterprise Computing Centers, and PTES joint hubs will be deployed at existing SATCOM gateway hubs.

The government wants contractors to use Agile software development methods, and offerors can propose sprints that last between two and four weeks.

Responses to the RFI are due Dec. 5. The contractor feedback is intended to inform a draft request for proposals expected in December, as well as a final RFP expected in March 2018.

By ROBERT LEVINSON

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DOD

Network Modernization Gets \$325 Million Pentagon Revamp

The Defense Department's Office of the Chief Information Officer (DOD CIO) is seeking information technology support services to meet its network and information mission through a contract originally estimated at as much as \$325 million. The contract, formerly known as Mission Support Services, is now called CIO Mission Support Services (CMSS).

The solicitation will offer a wide scope of work focusing on cybersecurity and IT, according to the Oct. 19 announcement.

The CIO's priorities include:

- Modernizing the DOD networks by fielding the Joint Regional Security Stacks, a suite of cybersecurity tools that protect the networks.
- Defending against cyberattacks.
- Advancing cyber basics and improve cyber defenses.
- Establishing the Mission Partner Environment.
- Reviewing and reducing DOD IT costs.
- Migrating data to the cloud.
- Empowering mobile data access.
- Maximizing spectrum access.
- Providing support to the joint development of the DOD comprehensive IT registry.

The performance work statement offers details on the entire scope of services needed, which also encompasses information enterprise; command, control, communications, computers, and information infrastructure capabilities (C4&IIC); IT management analytics; and data analytics support.

Most of those requirements were on the original sources-sought notice issued April 28. The response period for the presolicitation has closed, and DOD hasn't released a timeline for a request for proposals for the planned multiple-award, indefinite-delivery/indefinite-quantity contract.

Leidos Holdings Inc. (\$1.2 billion), Verizon Communications Inc. (\$934 million), and DXC Technology Co. (\$927 million) are among the companies that have generated the most revenue in DOD's \$10.1 billion IT networks market, according to Bloomberg Government data.

By KATRICE EBORN

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Information Technology**Future of DOD's Hardware, Software Buying Is at DISA**

The Defense Information Systems Agency is ready to adopt new technologies that would lead to spending more on software and less on hardware, according to agency officials and initiatives listed in the agency procurement forecast.

Spending at the agency hasn't indicated a shift quite yet. Bloomberg Government expects both hardware and software contract obligations to increase in fiscal 2017. Defense Department contract obligations reporting is on a 90 day-delay, and 2017 reporting will be finalized in January. As the agency priorities evolve, IT vendors should track future defense spending with this transition in mind.

Forecast: Software Up, Hardware Down As part of its forecast to industry this month, DISA highlighted software-defined networking (SDN), a flexible technology that moves spending away from hardware.

"The Department of Defense will save money by not buying as much hardware and using virtualized machines," Army Lieutenant General Alan R. Lynn said in June at an Armed Forces Communications and Electronics Association event.

At the forecast to industry, DISA infrastructure executive Jessie Showers challenged industry to bring the Pentagon ideas for using SDN technologies.

In combining SDN with other technologies such as light fidelity, a technology similar to Wi-Fi that uses light-based communication rather than radio-based technology, it's expected that "entire networks will run on LEDs," according to Showers.

Today: Software Up, Hardware Up It's possible that contractors will start to see hardware spending drop below software levels, though the Pentagon will have to deviate from spending trends to meet this new requirement in the next decade. This may take some time. DISA has been discussing the idea of SDN since at least April 2016.

Looking solely at products and not services, defense spending on software was up for the third consecutive year in fiscal 2016, and BGOV expects this trend to continue once agencies finish reporting fiscal 2017 obligations. Hardware obligations, despite year-over-year ups and downs, are also likely to increase.

Hardware and software spending increased by 14.5 percent and 24 percent, respectively, between 2012 and 2016. Although the software obligations have increased faster, at the 2012 through 2016 rates, it would take almost 15 years for software spending to surpass hardware.

What's Ahead The Defense Department requested \$50.7 million related to SDN as part of its fiscal 2018 budget, according to a keyword search for "software defined networking" and "software defined everything" in BGOV's Research, Development, Test and Evaluation dashboard. More than half of the money is out of DISA.

By LAURA CRISTE

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Information Technology**The U.S. Military's Favorite Cyber Contractor**

Old-school firewalls and antivirus software try to block or at least detect hackers, but when those systems fail, they can't do much to limit the trail of destruction. More often than you might think, corporate information technology staffers are reduced to wandering around to physically tinker with infected machines to figure out the problem. And the most advanced security software can be undone by the dumbest of human errors. Equifax Inc. blamed the hack of 145 million Social Security numbers on an unnamed IT guy failing to install a security update.

Even the Defense Department has proved vulnerable to hackers, who are still making use of the National Security Agency cyber weapons that began leaking online last year. In the military, the gap between developer and user can be more profound, said Nate Fick, the CEO of security software maker Endgame Inc., which has built its business on Pentagon contracts. "When it comes down to the individual, you're dealing with a 19- or 20-year-old operator on a 12- to 18-month duty rotation," said Fick, a former Marine Corps commander who served in Iraq and Afghanistan. "You better build a product that's easy to use."

Endgame is part of a growing slice of the security software industry known as "endpoint detection and response," or EDR. An endpoint, in this case, is a particular computer or server that can be hacked. Endgame's software is designed to stop an attack from spreading any further by remotely examining, quarantining, and fixing a hacked endpoint. The nine-year-old company's gear is sophisticated enough to detect hacking techniques that have never been cataloged by tracking minute upticks in computer processing power. Yet the platform is also meant to be foolproof, responding to voice commands as complex as "find all systems running Apache Struts 2 2.3.x" — the software exploited at Equifax — and as simple as "take those machines offline."

Software such as Endgame's is having a moment because other tools have failed, said Lawrence Pingree, a research vice president at Gartner Inc. "Traditional providers lost some trust over the last five or six years because of the number of data breaches that were caused in part by the failure of malware detection," he said. Gartner predicts that the EDR market, which more than doubled, to \$500 million, in 2016, will top \$800 million this year and \$1.5 billion in 2020. That's far faster than the single-digit growth of the \$9.6 billion firewall market.

Among EDR companies, Endgame is dwarfed by Carbon Black Inc. and CrowdStrike Inc. But its collection of government contracts, which are typically stable, stands out, Pingree said. That's important in a hyper-

competitive field likely to be winnowed down in the next few years through acquisitions and mergers.

Endgame started out selling hacking tools to the feds. Selling offense was great training for playing defense, Fick said. He joined as CEO in 2012, when the company was remaking itself as a guardian of federal agencies. “Nobody is more attacked than the Pentagon,” he said. The company nabbed the Air Force as a client last December with a \$19 million deal. It recently won a \$1 million contract with the Navy and is wooing the Army. Civilian clients include a financial services firm and a health care company. Endgame said its annual recurring revenue has more than doubled this year and will do so again next year, but it wouldn’t share more detailed figures.

The company is moving beyond government contracts; more than half of its clients are commercial. The Texas A&M University system, which spans 13 universities and state agencies and about 148,000 students, began using Endgame last year. Before that, A&M’s in-house security team of five full-time staffers and a handful of student workers had to rely on the IT help desk, entering a ticket to request a physical inspection of suspicious computers or servers, said Christopher De La Rosa, one of the staff security analysts. Now, he can examine most systems remotely and keep his attention on high-risk data such as health or financial information, he said.

In some cases, the team can resolve problems twice as fast as it used to, De La Rosa said. “Instead of waiting for something to occur, we’re actively out there hunting and preventing attacks,” he said. “You only have so much time and so much manpower.”

BY DUNE LAWRENCE

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Information Technology

Why Government Is Behind Curve On Agile Software Development

Only four out of 24 federal agencies have a clearly defined policy when it comes to incremental (or Agile) software development, said the Government Accountability Office, the U.S. federal government’s top watchdog. According to a Nov. 7 report, 11 of the 24 agencies studied have an incremental development policy in place but do not clearly define the process for certifying which projects qualify as incremental. Nine agencies have no policy.

How Can Agencies Benefit From Agile Development? Agile development refers to a leading method of managing the risks of delays or cost overruns associated with software development projects. While traditional (or Waterfall) development methods require rigorous pre-planning before building an application top-to-bottom, Agile calls for breaking the project into discrete chunks and iterating on them over multiple sprints. The benefit of this approach is that it en-

ables project managers to incorporate new requirements or functionalities along the way as needs change.

Anticipating and adapting to evolving requirements has long been the Achilles’ heel of government software projects. The Defense Department is known for multi-year, multibillion-dollar development fiascos, such as the Army’s General Fund Enterprise Business System (GFEBS) and Logistics Modernization Program (LMP), which were finished years late, millions over budget, and perhaps most importantly, lacked many of the basic functionalities of the systems they were meant to replace. Other development projects, like the Department of Homeland Security’s Secure Border Initiative Network, were canceled altogether after years of work and millions spent.

In response to these project management challenges, risk management tools were formally enacted in the Federal Information Technology Acquisition Reform Act (FITARA). In accordance with FITARA policies, the Office of Management and Budget mandated that federal chief information security officers develop policies and processes to certify whether agency personnel are adequately implementing incremental development.

Nevertheless, the Nov. 7 report illustrates that 20 of 24 agencies have fallen short of that goal. Predictably, agencies listed staff shortages, inexperience with iterative methodologies, and sluggish oversight processes to explain their failure to comply. But they also cited procurement issues that delayed their access to critical products and services. The Office of Personnel Management reported that it struggled “to reduce the time from contract initiation to award, as well as to reduce the amount of contract documentation and its complexity.”

The GAO is not alone in finding fault with the government’s current approach to contracting for Agile development. Its findings closely align with a 2015 report by the MITRE Corp. that urged the government to develop “shorter, smaller, and more flexible contracts” and to adjust procurement processes to reflect the demands of faster software release cycles.

A Contracting Strategy for Agile? So far, the federal government hasn’t aligned on an effective contracting strategy to support incremental development that Bloomberg Government could identify. One approach, first introduced by the General Services Administration and later by DHS, was to launch a multi-award contract specifically geared toward Agile requirements. But soon after unveiling its Agile Services Delivery blanket purchase agreement, GSA was forced to scale back the contract after it was twice halted by bid protests. Agile BPA has awarded only 10 task orders worth \$5.78 million since fiscal 2015. Similarly, DHS efforts were upended when its Flexible Agile Support for the Homeland (FLASH) vehicle faced repeated bid protests.

The second way government leaders can promote Agile is to formally state the intent to use Agile methods in new contract solicitations. But according to a recent study by Deloitte, that’s apparently not happening yet either. Based on text analysis of more than 3,000 software solicitations in fiscal 2016, researchers found no evidence that agencies were taking steps to favor Agile over traditional Waterfall methods.

So why is the federal government having such a hard time contracting for Agile? For starters, Agile requires a radical mindset shift. Contracting offices, which have to

balance competing demands for efficiency and fairness, tend to rely on dense proposals and rigorous documentation to evaluate vendors, and on fixed-price contracts once decisions are made. The challenge is that the fluid nature of Agile development makes this kind of highly structured pre-planning virtually impossible.

To help address this problem, GSA and DHS instituted a “show, not tell” approach to evaluating vendor offerings. Officials invited interested contractors to showcase their solutions through a series of technical software demonstrations, rather than written proposals alone. Although Agile BPA and FLASH ultimately failed to make the impact some might have hoped, proponents believe their unique approach to the contracting process may serve as a model for future Agile procurement.

“While FLASH was flawed, it showed the tremendous potential of running a contracting process that rewards excellence at designing and building working software, rather than competence in writing proposals and navigating bureaucracy,” said Eric Hysen, former executive director of the DHS Digital Service.

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DOD

Federal ‘Social Engineering’ Market Emerges in Era of Cyber War

The Pentagon is calling on vendors to help develop “social engineering” technologies and services that can deceive and confuse adversaries using false information, while also seeking to protect Americans from such attacks.

Psychological operations and electronic warfare are decades-old techniques for gaining advantage in conflict zones. The success of the World War II D-Day invasion of Normandy was predicated on fooling the Germans about the date and location of the attack.

What’s different in the age of massive, cross-border cyberattacks are calls for strategies, technologies, and services that could both weaponize data and protect it from disclosure.

A recent notice for a contract issued by the Navy’s Fleet Logistics Center in Philadelphia calls for “electronic warfare, psychological operations, operations security, and military deception” as part of a broad requirement for professional services in support of the Pentagon’s Joint Staff.

The solicitation seeks vendors that can provide combatant commanders “the same level of confidence and expertise in employing IO (Information Operations) weapons as they have in employing kinetic weapons.” It seeks counter-terrorism (CT), counterinsurgency (COIN), unconventional warfare (UW), foreign internal defense (FID), and stability operations capabilities.

Awardees are expected to gather lessons learned from these and other kinds of engagements and share

them across the Defense Department and with other government agencies and international partners.

The Army in April released a broad agency announcement (BAA) calling for “cyber deception” solutions that would “manipulate the mental state and decision process of the adversary so that we can degrade and mitigate their attack effectiveness.”

The solicitation notes that “users could be directly or indirectly entangled in the game due to the nature of shared infrastructure.” It will remain open through 2022.

Federal agencies are also playing defense, seeking training and technology that will protect Americans from malicious social engineering, such as efforts to manipulate people into performing certain actions or divulging sensitive information.

The Defense Advanced Research Project Agency asked in a June BAA for proposals to develop “Active Social Engineering Defense” technology that would automatically detect and deter attacks. “To build secure cyber systems, it is necessary to protect not only the computers and networks that make up these systems but the humans as well,” DARPA said.

Bloomberg Government data indicates there are 13 open “Social Engineering” solicitations at DOD, the departments of Treasury, Transportation, Homeland Security, the Environmental Protection Agency, and the Federal Retirement Thrift Investment Board.

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Army

C5 Consortium Wants Ideas To Benefit Army Training

The Pentagon is using its Other Transaction Authority (OTA) to compete the development of a prototype for centralized training, to be known as the Army Training Information System (ATIS). OTAs allow the government to dispense with some of the normal acquisition regulations.

The Defense Department, through the Consortium for Command, Control, and Communications in Cyberspace (C5), has requested white papers outlining proposals.

ATIS is intended to reduce the number of connections and interfaces needed to “develop, schedule, manage, report, take, and deliver Army training,” according to the industry day slides. The ATIS project seeks significant participation by “nontraditional” defense contractors such as small businesses, according to the slides.

The Army has budgeted for the ATIS program, including \$12.7 million requested in fiscal 2018 system development and demonstration funds.

Too Many Systems The Army has multiple systems and interfaces to manage training. Like other organizations, it has multiple types of training: individual; operational unit training at progressively higher organizational levels; and institutional or “school-house” training (e.g., the Fires Center of Excellence at Fort Sill, Okla.). The goal of ATIS is to create a common operating picture of “the training environment through integrated, interoperable training development, management, scheduling, and delivery capabilities.”

A single interface will better ensure that soldiers and units have the training they need for their current or next assignment and that the training fits into overall deployment requirements. The statement of work seeks integration of commercial off-the-shelf software.

C5 Participation C5 has an Other Transaction Authority agreement with Army Contracting Command (ACC). One of the most well-known consortia, C5 is made up of more than 700 companies and institutions. Members include larger businesses such as CALIBRE Systems Inc. and Leidos Inc., and scores of smaller ones, including Bloomberg Government.

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OFCCP

Florida Attorney Said to Be Pick to Lead Contractor Watchdog

Craig E. Leen, city attorney of Coral Gables, Fla., is likely to be picked to lead a Labor Department office that audits government contractors for workplace non-discrimination and affirmative action compliance, sources in the federal contracting community told Bloomberg Law.

Some in the business community anticipate that Leen will take the helm as director of the Office of Federal Contract Compliance Programs, the sources said. The position doesn't require Senate confirmation, though some have argued that it should.

Other names have previously been floated for OFCCP director, including two lawyers with ties to the Equal Employment Opportunity Commission and a former Senate labor committee attorney.

Leen has a connection with Labor Secretary Alexander Acosta. In addition to performing his city attorney duties, Leen taught as an adjunct professor at the

Florida International University College of Law, where Acosta served as dean.

Prior to becoming city attorney of Coral Gables in 2011, Leen was an assistant county attorney in the Miami-Dade County Attorney's Office, where he was chief of the federal litigation and appeals sections. His work in the private sector includes positions with law firms Morgan, Lewis & Bockius in Miami; Skadden, Arps, Slate, Meagher & Flom in Boston; and Cleary, Gottlieb, Steen & Hamilton in New York.

Leen earned a law degree from Columbia Law School and a bachelor's degree in government and economics from Georgetown University.

A Labor Department spokesman declined to comment Nov. 13. The White House doesn't comment on personnel issues and has no announcement at this time, a spokesman told Bloomberg Law on Nov. 13.

Leen also told Bloomberg Law he has “no comment at this time.” However, Leen confirmed to the Miami Herald on Nov. 9 that he accepted a DOL post that oversees compliance rules for government contractors after Acosta contacted him this past summer and that his family has already moved to the Washington area.

Chamber Sent OFCCP Report to Leen, Sources Say The OFCCP enforces Executive Order 11,246, which prohibits discrimination based on race, color, sex, religion, national origin, sexual orientation, and gender identity. The agency also provides similar protections to disabled individuals and covered military veterans under Section 503 of the Rehabilitation Act and Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act.

During the Obama administration, the agency received criticism from some employer representatives and Republican lawmakers for what they viewed as burdensome rulemaking and lengthy, deep-dive audits of contractor employment data. The office annually audits about 2 percent of about 200,000 federal contractor locations.

The U.S. Chamber of Commerce has provided Leen with a copy of an OFCCP report it sent to the Labor Department in September, sources said. The report contained recommendations to make changes to how the office operates.

Worker advocacy and civil rights groups, however, have applauded the agency's efforts to combat discrimination. The agency collected a record amount in back pay and interest from discrimination settlements with contractors in fiscal 2017.

The OFCCP this year weathered a possible merger with the Equal Employment Opportunity Commission, a controversial proposal that died in Congress.

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Legal News

Navy

Fluor's Navy Base Protest Led to \$495 Million Contract Win

Fluor Federal Solutions LLC successfully protested the Navy's \$492 million Guam base operations support services contract to DZSP 21 LLC, which led to the re-opening of the competition that Fluor eventually won, the Government Accountability Office said (*Fluor Fed. Solutions LLC*, GAO, B-410486, 1/18/17, *decision released* 11/20/17).

The Navy evaluated offerors disparately under the staffing and resources evaluation factor, the GAO ruled, recommending that the service re-evaluate offers.

Fluor then won the eight-year, \$495 million contract in September, prompting DZSP to file its own protest at the GAO in October. A decision is due Jan. 11, 2018, the GAO's docket said.

Workforce Risk The Navy erred by criticizing Fluor's staffing approach as possibly being unable to recruit an adequate workforce, while failing to meaningfully consider a similar risk in DZSP's approach, the GAO said.

Fluor twice had successfully protested the selection of DZSP at the GAO.

Wiley Rein LLP represented Fluor. Covington & Burling LLP represented DZSP 21 LLC.

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False Claims Act

\$663 Million Reversal in Guardrail Case Will Stand, Court Rules

The decision to throw out a \$663 million false claims verdict against a highway guardrail provider will stand, the U.S. Court of Appeals for the Fifth Circuit said (*United States ex rel. Harman v. Trinity Indus. Inc.*, 5th Cir., No. 15-41172, *petition for rehearing en banc denied* 11/14/17).

No Fifth Circuit judge requested that the court be polled on whistle-blower Joshua Harman's request that the court reconsider its Sept. 29 ruling reversing the verdict, the order said.

The order lets stand an important false claims victory for defendants seeking to defeat cases by showing that alleged misconduct or noncompliance wasn't material to government payment decisions.

'No Fraud at All' Trinity Industries Inc. convinced the Fifth Circuit that the jury verdict was improper because the government had always approved of and paid for its product despite allegations of regulatory noncompliance.

"When the government, at appropriate levels, repeatedly concludes that it has not been defrauded, it is not forgiving a found fraud — rather it is concluding that there was no fraud at all," the court said.

The ruling ignored Supreme Court precedent, reweighed evidence the jury considered, and placed too much importance on the reactions of government workers who may not want to admit they've been duped by a federal contractor, Harman had argued in his petition for rehearing.

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False Claims Act

KBR's Concealment Makes Difference, Whistle-Blower Says

The D.C. Circuit should examine how a recent Fifth Circuit victory for defendant Trinity Industries Inc. in a false claims case is distinguishable from a case alleging the concealment of kickbacks against Kellogg, Brown & Root Services Inc., whistle-blower Harry Barko told the court (*United States ex rel. Barko v. Halliburton Co.*, D.C. Cir., No. 17-7057, *letter advising of additional authorities filed* 11/13/17).

Barko said that ruling helps him because, while Trinity showed that the government continued to pay it despite the government's knowledge of alleged misconduct, that critical government knowledge is missing from the D.C. Circuit case.

Unlike the Fifth Circuit's whistle-blower, Barko said he has established false claims materiality because the government wouldn't have paid KBR if it knew about the allegations of kickbacks.

KBR views the Fifth Circuit ruling as helpful to its case, stating that the government's payment of a 2012 certified claim and failure to disallow costs despite full knowledge of Barko's allegations shows that alleged misconduct was immaterial to payment decisions.

Barko is appealing a district court's rejection of allegations that KBR submitted false claims for payment because the contract was tainted by kickbacks paid to KBR by a subcontractor.

Approval by Fraud Materiality didn't exist where the Federal Highway Administration knew about Trinity's alleged regulatory noncompliance but continued to pay for and approve of its guardrail product, the Fifth Cir-

cuit said Sept. 29 in *U.S. ex rel. Harman v. Trinity Indus. Inc.*

Materiality exists in the case against KBR because the government lacked actual knowledge of the payment of kickbacks, had no knowledge of material false statements, and KBR engaged in fraud to gain approval of its claim for payment, Barko said.

KBR's investigation revealed wrongdoing that it didn't report to the government, and this concealment is sufficient to create a dispute over materiality, Barko said.

Kohn, Kohn & Colapinto LLP represented Barko.

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Immunity

Military Dictated Burn-Pit Use Despite Known Risks, KBR Says

A lawsuit from soldiers alleging harm from Kellogg, Brown & Root Services Inc.'s use of waste burn pits in Iraq under a logistics support contract can't be revived because the military made all key decisions involving their use, and therefore the contractor has immunity under the political question doctrine, KBR told the U.S. Court of Appeals for the Fourth Circuit (*In re KBR Inc., Burn Pit Litigation*, 4th Cir., No. 17-1960, *appellees brief filed* 11/14/17).

The military also fully integrated KBR into its mission such that the combatant activities exception to the Federal Tort Claims Act, which prevents regulation of battlefield conduct, also bars the suit, KBR said.

Either reason is sufficient to affirm a district court's conclusion that it couldn't assess the soldiers' injury claims without second-guessing the wisdom of military decisions, KBR said.

A court can assess the validity of negligence claims against KBR by assessing the standard of care established by the contract, not the wisdom of military decisions, the soldiers argued Oct. 16 in their opening brief.

'Pervasive Control' The political question doctrine bars the suit because the military exercised pervasive control over all aspects of KBR's contract performance, including the decision to use the burn pits, where to place them, and what to burn, KBR said.

The military demanded burn pits over other potential waste removal options despite knowledge of health risks, KBR said.

The soldiers have no evidence that any military official viewed KBR's burn-pit services as deviating from contractual requirements, the contractor said.

The combatant activities exception to the FTCA precludes this suit because KBR was functionally under military command, the contractor said.

Covington & Burling LLP and Bracewell LLP represented KBR.

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DOD

XPO Appeals Decision Backing \$7 Billion Transport Contract

XPO Logistics Worldwide Government Services LLC will appeal a decision upholding Crowley Logistics Inc.'s selection to perform a \$7 billion contract to provide freight transport services for the Defense Department (*XPO Logistics World Gov't Servs. LLC v. United States*, Fed. Cl., No. 17-1080 C, *notice of appeal filed* 11/13/17).

XPO waived its chance to challenge what it viewed as misleading discussions in a competition for the U.S. Transportation Command's award, the U.S. Court of Federal Claims said under seal Nov. 2 (*XPO Logistics World Gov't Servs. LLC v. United States*, Fed. Cl., No. 17-1080C, *opinion reissued* 11/17/17).

The contractor had argued that the U.S. Transportation Command engaged in unequal discussions with offerors and failed to reasonably evaluate past performance.

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Navy

Epsilon Can't Challenge Navy Support Order, Watchdog Rules

Epsilon Systems Solutions Inc. couldn't protest the performance of a \$91 million Navy support task order because the alleged relaxation of requirements for the awardee involved a matter of contract administration, the Government Accountability Office said (*Epsilon Sys. Solutions Inc.*, GAO, B-414410, 11/6/17, *decision released* 11/16/17).

Contractors aren't allowed to challenge contract administration matters at the GAO, it said.

URS Federal Services Inc. will proceed with its order to provide engineering and technical services in support of hull, mechanical, and electrical systems testing, evaluation, and assessment aboard Navy ships.

Second Protest Epsilon protested the Navy's selection of URS, challenging the military service's technical and management approach evaluation, but the GAO upheld the award in June.

Epsilon protested again, asserting that the Navy had relaxed certain technical requirements for URS. The Navy materially changed the scope of work in the solicitation, and therefore created an improper sole-source selection of URS, Epsilon said.

However, no evidence showed any change to the task order requirements, the GAO found.

Therefore, the GAO found no reason to grant an exception to its general rule against reviewing challenges to contract administration matters.

Pillsbury Winthrop Shaw Pittman LLP represented Epsilon. Wiley Rein LLP represented URS.

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Proposal Evaluation

SEC Owes Protest Costs To Investigative Services Offeror

The Securities and Exchange Commission shouldn't have opposed Protection Strategies Inc.'s meritorious protest of a now-terminated investigative services contract award to PAE Professional Services Inc., the Government Accountability Office ruled (*Protection Strategies Inc.*, GAO, B-414573, 11/9/17, decision released 11/14/17).

The SEC should have recognized that it failed to consider technical differences among offerors, and therefore Protection Strategies should be reimbursed its protest costs related to that aspect of its contract protest, the GAO said.

Protest cost reimbursement is proper where an agency unduly delays taking corrective action in the face of a clearly meritorious protest, which causes a protester to expend unnecessary time and resources seeking relief, the GAO said.

The SEC terminated a \$4 million award to PAE for background investigative and adjudication services, and canceled the procurement after Protection Strategies protested.

PilieroMazza PLLC represented Protection Strategies Inc.

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Claims

Weekly Case Roundup

Agility Seeks \$47 Million For Iraq Reconstruction Work

Agility Public Warehousing Co. KSCP said it is owed \$47 million for its performance under a contract to provide logistics and warehousing services to support U.S. military forces and reconstruction efforts in Iraq (*Agility Public Warehousing Co. KSCP v. United States*, Fed. Cl., No. 17-1791 C, complaint filed 11/14/17).

The government breached its obligation to reimburse all allowable costs, and failed to adequately respond to security problems at Agility's sites, the complaint said.

Repair Termination Was Reasonable, U.S. Says The government told a court that it reasonably terminated a \$13.7 million contract for pavement demolition and relocation of utilities at Buckley Air Force Base, Colo. (*Alutiiq Mfg. Contractors LLC v. United States*, Fed. Cl., No. 1:15-cv-00881, response to motion for summary judgment filed 11/17/17).

Alutiiq Manufacturing Contractors LLC missed deadlines and failed to achieve progress milestones, the government said.

Email Wasn't Valid Claim in FEMA Contract, Board Says The Civilian Board of Contract Appeals dismissed for lack of jurisdiction Pros Cleaners' \$600,000 breach claim related to its performance of a disaster relief support contract for the Federal Emergency Management Agency (*Pros Cleaners*, CBCA, No. 5871, 11/15/17).

An email Pros Cleaners submitted to the contracting officer was inadequate to establish jurisdiction because it didn't contain a clear statement providing notice of a claim and the amount of the claim, the board said.

International News

International Trade

Trump Chases U.S. Arms Deals In Asia to Help Him Win Re-Election

President Donald Trump had one question for Vietnamese Prime Minister Nguyen Xuan Phuc: Why wasn't his country buying more American military equipment?

For Trump, a self-styled traveling salesman, crisscrossing the region to reverse decades of trade deficits, Vietnam's decision to buy arms from Russia was incomprehensible, almost insulting. Never mind that U.S. law prevented such sales until last year.

Trump reminded Phuc that he's been president for 10 months, according to two people who requested anonymity to discuss a private meeting. What was he waiting for?

He needed quick wins, he told his team in the room, because he'd be running for re-election before anyone realized. And weapons sales, in Trump's view, are good for his approval ratings.

The meeting was a microcosm of the president's 11-day tour through Asia, a marathon trip where Trump was repeatedly lavished with flattering gestures by foreign leaders, but frustrated in his desire to score quick wins on trade or North Korea that would buoy him politically back home.

Asian nations were looking for signs Trump hadn't abandoned the region when he pulled out of the Trans-Pacific Partnership trade deal in January. The White House seemed to suggest the sheer length of the trip was proof enough, with both Trump and his aides referring it again and again.

Regional Expectations Local leaders were looking for seriousness and not just stamina, any sign Trump was prepared to provide a potent counterbalance to China. There, he offered them little reason for optimism. He was tweeting about the tax reform fight back home before he even left Manila, his final stop.

The administration "is not fully meeting regional expectations for U.S. leadership," according to Scott Snyder, author of the forthcoming book "South Korea at the Crossroads."

"The president's presence in Vietnam and the Philippines at the region's premier regional gatherings was the minimum prerequisite," Snyder said. "But in the absence of a more specific and clearly articulated regional strategy toward Southeast Asia, it will likely be seen as falling short of expectations."

Much like his first foreign trip in May, which began with \$110 billion in arms sales to Saudi Arabia, Trump rarely set down in a country without pointing out that buying a few F-18s would go a long way toward winning his heart. He told the story repeatedly of how a U.S.-sold missile-defense system had knocked down a rocket targeting an airport in Saudi Arabia.

But he returned to Washington without having secured a major new order for American defense contractors.

Warm Welcome In China, the trip's most pivotal stop, Trump expressed his awe at the Forbidden City tour and opera performance he received and bragged that he had gotten President Xi Jinping to publicly declare his desire for a denuclearized Korean Peninsula.

"That's a big statement," Trump said. "He made that statement, and a lot of people didn't — they didn't pick that up."

But China has publicly supported a denuclearized Korean Peninsula since at least 2005, and Xi has made the point publicly for years.

The two countries did announce \$253 billion in business deals, involving U.S. industrial giants such as Boeing, Honeywell and General Electric, tech companies like Qualcomm, and even Goldman Sachs. But many of the deals are tentative agreements that might not be fulfilled, and the one market-opening move by China, to allow greater foreign ownership shares in financial companies, didn't even warrant a mention by Trump.

In Hanoi, Trump also oversaw the signing of a series of memorandums of understanding between American energy and aerospace companies and Vietnamese state-owned enterprises. But no dollar amounts were announced, and members of the White House press staff deferred to their Vietnamese counterparts to explain what the agreements involved.

Work to Do U.S. Secretary of State Rex Tillerson, speaking to reporters shortly after the Chinese deals were announced, conceded that there was "a lot of work left to do to progress trade to the point that it will achieve President Trump's objectives."

"Quite frankly, in the grand scheme of a \$300 [billion] to \$500 billion trade deficit, the things that have been achieved thus far are pretty small," Tillerson said.

Trump also struggled to gain traction on North Korea, leaving Beijing without any new public assurances from China about measures that would exceed the financial punishments mandated by the United Nations.

His efforts to improve military cooperation between Japan and South Korea to counter the threat from Pyongyang were met largely with a shrug by leaders of those two countries, which favor different approaches to defusing the crisis.

Trade Vision At the state dinner in Trump's honor in Seoul, the South Koreans served shrimp caught in waters off islands that are claimed by Japan. In a further barb, the guests included a woman who had been forced to work as a sex slave for the Japanese military during World War II.

An address in Vietnam intended to contrast his global-trade vision with China's had a scolding tone, sounding less like an invitation to link arms than a warning that the free ride was over. Xi, for his part, wel-

comed the world to “ride the fast train of China’s development.”

Trump said too many countries had flouted the rules and hurt American workers and companies. He said the U.S. would no longer join multilateral deals, like TPP, which the remaining 11 participants spent the week negotiating without his input.

The speech was the “latest nail his administration has driven into the multilateral trading system, which countries regard as instrumental to the region’s growth and development,” according to Lynn Kuok, a nonresident fellow at Brookings Institution, a Washington-based think tank, and a senior research fellow at the University of Cambridge.

Russian Tensions Nor was the president able to leverage his time with Russian president Vladimir Putin into tangible progress on how to handle the Syria conflict after the expected defeat of Islamic State militants. An expected formal meeting between Trump and the Russian leader never materialized, and a joint statement issued by the two countries essentially committed to maintaining the status quo.

Trump did seem to get under Putin’s skin by playing hard-to-get on a formal meeting, leaving the Kremlin trumpeting their chat during a short walk as the much-heralded get-together.

Still, even those informal discussions managed to create a new political headache for the White House when Trump told reporters that he believed Putin believed his own denials of Russian meddling in the 2016 election.

The comment angered some in his own party, who argued that the former KGB agent’s denials weren’t credible. The U.S. president later clarified that he agreed with the assessment by U.S. intelligence agencies of Russian culpability.

White House officials dispute the notion the president’s trip was light on accomplishment.

Lasting Benefits They say that speeches like the president’s address to the South Korean parliament, where he graphically detailed the horrors of life under the North Korean regime, and his trade address in Vietnam will set important markers for foreign policy under Trump.

They also see the stream of state dinners, summit galas, and military parades as accomplishments in their own right. They argue the administration is attempting repair and renew relationships that had frayed under President Barack Obama, saying Asian leaders shared Trump’s perception of the former president as a lecturing scold.

The administration believes that Trump’s embrace of Asian leaders — punctuated by asides about golf, blunt

policy conversations, and a freewheeling style — would pay more dividends than forcing potential partners into uncomfortable statements about human rights. And Trump sees the red-carpet welcomes as a result of his campaign to restore international respect for the U.S.

The president, perhaps sensing that the lack of hard-and-fast deals was going to be noticed back home, promised Nov. 13 that he would give an address upon returning to Washington to outline his accomplishments.

“I will be making a major statement from the @WhiteHouse upon my return to D.C. Time and date to be set,” Trump tweeted.

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Weapons

U.S. Plans to OK \$10.5 Billion Missile Defense Sale to Poland

The State Department notified Congress that it plans to approve a potential \$10.5 billion missile defense sale for Poland, according to a Defense Security Cooperation Agency statement.

Poland will use the Lockheed Martin Patriot-3 system to improve its missile-defense capability and deter regional threats, according to the statement. The prime contractors will be Raytheon, Lockheed Martin, and Northrop Grumman.

The sale of the missile interceptors, which Poland committed to buy during President Donald Trump’s trip there in July, has been a source of tension between the North Atlantic Treaty Organization and Russia, which borders Poland.

BY ROXANA TIRON AND CATHERINE DODGE

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