



HOT ISSUES IN FEDERAL CONTRACTING 2018

Presented by

PM | P ILIERO
MAZZA

PRESENTERS

John Shoraka

Managing Director

PilieroMazza Advisory Services, LLC

888 17th Street, NW, Suite 850

Washington, D.C. 20006

(202) 912-9253

ajshoraka@pmadvisoryllc.com

www.pmadvisoryllc.com

Isaias “Cy” Alba, IV

Partner

PilieroMazza PLLC

888 17th Street, NW, Suite 1100

Washington, D.C. 20006

(202) 857-1000

ialba@pilieromazza.com

www.pilieromazza.com

OBJECTIVES

- Cybersecurity – DFARS 252.204-7012
- VA Regulatory Updates
- SBA Regulatory Updates and Recent Developments
- HUBzone Changes
- EU General Data Protection Regulation and Privacy
- National Defense Authorization Act Fiscal Year 2018
- President Trump Administration – Impact on Government Contracting



CYBERSECURITY

DFARS 252.204-7012

- Under this provision, by December 31, 2017, contractors that have this clause in their contract and handle controlled unclassified information (“CUI”) must implement security controls
- The security controls are based on National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171
- In short, contractors must prepare and adopt a system security plan and implement those security controls

REGISTRATION ON DIBNET

- The regulation also requires rapid reporting of potential breaches
- Reporting must occur through <http://dibnet.dod.mil> if a cybersecurity incident occurs
 - Register now, as the registration process can take time and may put the contractor at risk of failing to comply with the 72-hour reporting requirement

OTHER CONSIDERATIONS

- Subcontractor Flowdown Provisions
 - DFARS 252.204-7012 must be flowed down to all subcontractors performing “operationally critical support” or when subcontract performance will involve covered defense information
- What if the Government has not marked the CUI?
 - Talk to the CO and clarify; try to get this in writing
- Consequences of non-compliance?
 - This clause does not have any fine, fee, or penalty provisions.
 - That said, failure to comply could result in a claim for breach of contract, which could then cause monetary damages and other consequences
- Recent congressional testimony

HELPFUL RESOURCES

- NIST Template for System Security Plan
 - <https://csrc.nist.gov/publications/detail/sp/800-171/rev-1/final#pubs-topics>
- FCC Small Business Cybersecurity Guidance
 - <https://www.fcc.gov/general/cybersecurity-small-business>
- Cybersecurity Evaluation Tool (CSET)
 - <https://ics-cert.us-cert.gov/Downloading-and-Installing-CSET>



CHANGES TO THE VA REGULATIONS

9

VA SHIFTS AUTHORITY TO SBA

- The VA is going to redefine VOSB and SDVOSB regulations to align with SBA regulations
- These changes would also affect ownership and control requirements
 - Comments recently closed on SBA's proposed rule, 83 FR 4005, and on the VA's proposed rule, 83 FR 1203
- More communication between VA Center for Verification and Evaluation and the SBA on small business status
- SBA will make affiliation determinations

PROPOSED RULES

- On April 6, 2017, VA issued proposed rules to revise and streamline the acquisition regulations.
 - Portions of the VAAR and internal agency policies will be rewritten and published in the Federal Register.
 - VA emphasized the following updates:
 - Part 844, Subcontracting Policies and Procedures
 - Part 845, Government Property
 - Part 831, Contract Cost Principles and Procedures
 - Part 833, Protests, Disputes, and Appeals
 - Part 852, Solicitation Provisions and Contract Clauses
 - Part 871, Loan Guaranty and Vocational Rehabilitation and Employment Programs



SBA REGULATORY UPDATES AND RECENT DEVELOPMENTS

12

SBA IS TAKING A LOOK AT ITS REGULATIONS

- On August 15, 2017, SBA requested information on which of its regulations should be repealed, replaced, or modified because they are obsolete, unnecessary, ineffective, or burdensome
- What could change?
 - Consistency
 - Ownership and Control
 - Joint Venture Requirements
 - Size and Affiliation rules
 - Economic disadvantage metrics
 - Recertification

RECENT DEVELOPMENTS

- Size Appeal of Analytic Strategies and how it relates to recertification under MACs/TOs following acquisitions
- On March 30, 2018, SBA issued a final rule amending OHA rules of practice to implement procedures for protests of eligibility for inclusion in the VA Center for Verification and Evaluation (“CVE”) database, 83 FR 13626, which take effect on October 1, 2018



HUBZONE



HUBZONE CHANGES

- NDAA 2018 made some significant changes to the HUBZone program, many of which will not take effect until January 1, 2020
- Effective immediately, however:
 - The current HUBZone map will be frozen and will not change until January 1, 2020 at the earliest
 - The SBA has been charged with creating a publicly accessible online tool to depict HUBZones
 - Starting in 2020, the maps will also change less frequently

HUBZONE CHANGES IN 2020

- A HUBZone designation of a military base closure area begins when the SBA Administrator designates an area as a base closure area, not when the base actually closes
- Nonmetropolitan counties based on income level will be determined by comparing the nonmetropolitan county's median household income against the statewide median household income, and not the median household income for only nonmetropolitan counties in that state

HUBZONE CHANGES IN 2020

- Governors can request that SBA designate areas in the Governor's state that do not fall into the existing HUBZone definitions as HUBZone. Governors can submit one petition per year requesting that an area or areas in the state be designated as HUBZones. If SBA approves of the Governor-designated areas, the Governor must submit data annually to demonstrate that the areas should remain designated.
- When a company submits an application for the HUBZone program, SBA will verify the eligibility of the applicant within 60 days.
- SBA will maintain a publicly available list of current HUBZone concerns

SBA CHANGES TO HUBZONE

- Effective May 25, 2018, the SBA's final rule amending the HUBZone regulations will allow indirect ownership by U.S. citizens because the statute does not require direct ownership
- Under the new rule, this means that a HUBZone small business concern must be at least 51% owned and controlled by U.S. citizens, either directly or indirectly



E.U. GENERAL DATA PROTECTION REGULATION & PRIVACY CONSIDERATIONS

20

EU GENERAL DATA PROTECTION REGULATION

- Effective May 25, 2018, the GDPR takes effect in the EU and supersedes the UK's Data Protection Act
- It changes the way companies control and process an individual's personal data and increases accountability obligations on organizations involved with data collection
- How could this affect United States laws/regulations?
 - Opt-out/in procedures?
 - Could Congress pass a comprehensive data protection law?
 - Will the States amend their laws?
 - Could the Facebook/Cambridge Analytica controversy fuel the changes?



**NATIONAL DEFENSE AUTHORIZATION ACT
FISCAL YEAR 2018**

22

NDAAs 2018

- Section 801
 - Revises the DFARS statement of purpose to emphasize quality, timeliness, and price reasonableness
- Section 805
 - Simplified Acquisition Threshold increased to \$250,000 for DoD
- Section 806
 - Micro-purchase Threshold increased to \$10,000

NDAAs 2018

- Section 827: Procurement Pilot Program
 - Directs DoD to carry out a pilot program to determine the effectiveness of requiring contractors to reimburse DoD for GAO protest costs
 - Only affects contractors with revenues in excess of \$250M
- Section 846: GSA Program Pilot
 - The “Amazon Amendment”
 - GSA to establish a program to procure commercial products through commercial e-commerce portals



PRESIDENT TRUMP'S IMPACT ON GOVERNMENT CONTRACTING

25

TRUMP ADMINISTRATION

- President Trump's Procurement Policies
 - Increased outsourcing of government services?
 - Increased infrastructure spending?
 - Further deregulation?
 - Emphasis on Commercial Items acquisitions
 - Emphasis on "Buy American" and increased protectionism
 - Less LPTA procurements



QUESTIONS?

27