BERKELEY RESEARCH GROUP

GOVCON RESEARCH REPORT
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CONTENTS

Berkeley Research Group's Government Contracts Advisory Services (GCAS) practice keeps its clients up to date on the latest regulatory developments affecting the government contracts industry. This edition of the GovCon Research Report summarizes the critical regulatory and compliance issues contractors faced in the second calendar quarter of 2013. The issues are summarized by the following key subject-matter areas:

- GSA Matters
- DOD Office of Inspector General Reports
- Pertinent Government Accountability Office (GAO) Audit Reports
- Key Federal Acquisition Regulation (FAR) Updates
- Key Defense Acquisition Regulation (DFAR) Updates
- Latest on Sequestration and Government Spending

GENERAL SERVICES ADMINISTRATION MATTERS

GSA OIG Report No. A130068/Q/3/P13002: Applicability of Price Reductions over the Maximum Order Threshold (April 26, 2013)

BY: SAJEEV MALAVEETIL AND ZACHARY SCHOENHOLTZ

On April 26, 2013, the GSA Office of Inspector General (GSA OIG) issued an audit report that addresses the applicability of price reductions on GSA Schedule orders exceeding the maximum order threshold (MOT). The GSA OIG's audit identified two contractors that failed to pass along price reductions on GSA Schedule orders exceeding the contractual MOT.

According to the GSA OIG, these price reductions would have amounted to over $100 million in savings to the Government. Per the report, the contractors claimed that Government orders over MOT are exempt from the price reductions based on the language in FSS clause I-FSS-125, which states vendors may:

> 1. Offer a new lower price for this requirement (The Price Reduction Clause is not applicable to orders placed over the maximum order in FAR 52.216-19).

GSA schedule contracts include the Price Reduction Clause (PRC), which requires contractors to grant to the Government price reductions under the contract when warranted. If a price reduction is warranted per the PRC, the contractor is required to report the price reduction to the Government and offer the price reduction for the same effective period-under the Schedule contract.

The GSA OIG contends, and the GSA agrees, that Government sales above the MOT are eligible for price reductions and that the parenthetical statement within I-FSS-125 is meant to imply that Government orders—whether in excess of the MOT or not—will not trigger PRC price reductions. In simpler terms, the GSA did not want to penalize vendors for providing larger discounts on GSA Schedule orders exceeding the MOT.

The GSA OIG audit report states that the GSA canceled I-FSS-125 in December 2004, but the clause still exists in the many GSA Schedule contracts. As a result, the GSA-OIG believes that some contractors will continue to exclude price reductions from GSA Schedule orders over the MOT.

The auditors made two recommendations to the Commissioner of Federal Acquisition Service (FAS). The GSA-OIG first recommends that the Commissioner "immediately review all schedule contracts to determine if I-FSS-125 is still incorporated into any contracts, and if so take steps to remove it." Immediately afterwards, the auditors recommend that the Commissioner "publish GSA's interpretation of I-FSS-125 clause language that Government orders above the maximum order are entitled to price reduction discounts." In an appendix to the report, the commissioner states that the FAS "concurs with the report recommendations."

In supporting its finding, the GSA OIG argues the illogical nature of the rationale that a GSA Schedule order over the MOT could receive lower discounts than a GSA Schedule order below the MOT. The GSA Commission of the FAS concurs with this conclusion. The GSA-OIG in its report fails, however, to give ample consideration to the fact that GSA Schedule orders over the MOT have historically (until changes to the FAR in March 2011 per FAC 2005-50) been subject to additional price reduction requirements per FAR 8.405–4. (In March 2011 the threshold for seeking additional price reductions was changed from the MOT to the Simplified Acquisition Threshold) As such, the pricing on these larger GSA Schedule contracts orders is not based on GSA Schedule contract prices, but instead on the results of subsequent negotiations and/or additional competition. The GSA OIG also fails to recognize that the PRC clause itself provides the Government price protection on GSA schedule contract prices but does not address separately negotiated pricing resulting from additional price reductions granted outside of the clause. As such, there appears to be an illogical rationale in the GSA OIG's own findings. Nonetheless, the GSA has taken the position that price reductions resulting from the PRC are applicable to GSA Schedule orders that have already benefitted from additional price reductions afforded to these orders outside the context of the PRC and per the requirements of FAR 8.405-4. •

GSA Semiannual Report to the Congress (GSA Semiannual Report) (October 1, 2012–March 31, 2013)

BY: RACHEL SULLIVAN

In its Semiannual Report to the Congress, the GSA OIG addresses management challenges regarding acquisition programs, financial reporting, and the American Recovery and Reinvestment Act of 2009. During this period:

- The GSA OIG issued 41 audit reports and recommended over $827 million in funds to be put to better use and in questioned costs
- The GSA OIG made 390 referrals for criminal prosecution, civil litigation, and administrative action
- GSA OIG management agreed with over $423 million of the GSA OIG's audit findings, while civil settlements of court-ordered investigative recoveries totaled over $101 million

Per the report, Preaward audits continue to play a crucial role in improving the Government's negotiating position regarding GSA acquisition programs because of their pre-decisional, advisory nature. The Office of Audits performed preaward audits of 30 contracts during this reporting period. While GSA contracting officers agreed with all preaward audit recommendations, they only achieved savings of 36 percent of this amount when pending options were awarded. The GSA OIG identified the following significant issues within one or more audit reports:

- Current and proposed price reduction clauses were ineffective, and sales monitoring systems did not ensure proper administration of price reduction contract provisions
- Commercial customers received greater discounts than those offered to GSA
- Commercial sales practice information was noncurrent, inaccurate, and/or incomplete
- Vendors overbilled GSA for unallowable costs and unqualified labor

During this semiannual period, W.W. Grainger agreed to pay $70 million to resolve false claims allegations. The Government concluded Grainger failed to disclose its commercial sales practices accurately during negotiations with GSA for its MAS contract, which constituted defective pricing and led to overcharges.

The GSA received 13 new voluntary disclosures during this period related to allegations of employee fraud and inappropriate behavior, as well as non-compliance with contract requirements. The GSA also evaluated 39 existing disclosures and assisted in evaluating four additional disclosures because of their potential impact on the GSA. Seven existing GSA disclosure evaluations were concluded during this period, resulting in $1,538,765 in settlements and recoveries to the Government. •

DOD OFFICE OF INSPECTOR GENERAL REPORTS

DoD Office of Inspector General (DoD-OIG) Report No. DODIG-2013-063: Award and Administration of Performance-Based Payments in DoD Contracts (April 8, 2013)

On April 8, 2013, the DoD OIG issued Report No. DODIG-2013-063 detailing its review of DoD contracting personnel's negotiation and administration of 60 performance-based payment (PMP) schedules. As part of this assessment, the DoD OIG identifies all events for a contract and assessed whether the contracting personnel were administering the contracts in compliance with Federal Acquisition Regulation and DoD requirements. The DoD OIG's primary focus is to determine whether DoD properly negotiated, verified, and disbursed the payment requests on contracts containing the schedules that were awarded from FY 2009 through FY 2011, valuing $13.2 billion.

Upon completing the review, the DoD OIG concludes that contracting personnel did not properly evaluate and negotiate schedules as a result of their failure to:

- Establish appropriate events for 1,807 events out of 2,356 total events on 57 approved PMP schedules, and determine whether the event value fairly represented contract performance for 44 schedules. Inappropriate events that triggered PMPs included:
  - Purchase orders
  - Monthly payment and/or passage of time
  - Government acceptance
  - Kickoff meeting/post-award conference/"entry" event.
- Clearly define the criteria for successful completion in 33 schedules, identify events as severable or cumulative in 23 schedules, and specify completion dates in 21 schedules.
- Properly negotiate and verify the contractors' need for contract financing or level of investment before authorizing PMPs in all 60 sample contracts.

The DoD OIG determines that the issues noted above were due to DoD contracting personnel not:

- Performing adequate reviews of schedules provided by contractors
- Using expenditure data or other independent data to value events
- Taking PMP contract financing training

In addition to not requiring that contracting personnel be required to the training noted above, DoD guidance is determined overall to be inadequate and inaccurate.

The DoD OIG concludes that these deficiencies resulted in the following:

- DoD contract personnel assuming risk by making advance payments totaling $11.4 billion
- DoD contract personnel may have made full payments for less than full contract performance
- The Government may have needlessly incurred $28.8 million in carrying costs associated with the $7.5 billion that DoD paid contractors
  - The Government could realize potential monetary benefits of $13.6 million to $53.3 million over the next five years related to reduced carrying costs
- The DoD limited its ability to ensure that it received adequate consideration

To address these deficiencies, the DoD OIG recommends that the Director of Defense Pricing:

- Require contracting personnel request a contractor estimate of expenditures before approving the PMP schedule

- Develop a training program that includes a discussion on appropriate event descriptions and required elements
- Update guidance to require contracting personnel to determine whether the contractor could obtain private financing and the amount of contract financing, and define what a reasonable level of contractor investment is •

PERTINENT GOVERNMENT ACCOUNTABILITY OFFICE (GAO) AUDIT REPORTS

GAO-13-566, Defense Contractors: Information on the Impact of Reducing the Cap on Employee Compensation Costs (GAO Audit Report GAO-13-566) (June 19, 2013)

BY: KAYLA SEE

On June 19, 2013, the GAO issued report GAO-13-566 on its review of Government contractor employee compensation. The review was performed in response to proposed regulations included in the 2013 National Defense Authorization Act, which would further cap allowable executive compensation for Government contractors. GAO assessed the potential impact on the contractor industry base of a new cap set at the salary level of either the U.S. president ($400,000) or vice president ($230,700). In addition, the GAO examined the inconsistencies of current caps on executive compensation across Federal agencies. For the purpose of the GAO's report, all of the data was based on fiscal year 2011 information that was received from 27 contractors, comprising 7 large-tier, 10 mid-tier, and 10 small-tier contractors.

The compensation cap is currently calculated based on an analysis of compensation of senior executives at large, publicly traded companies. Since 1998, it has increased in real terms (adjusted for inflation and 2011 dollars) by 63 percent and is currently set at $763,029 for 2011 and 2012. The 27 contractors surveyed reported over $80 million each year in estimated compensation costs in excess of the existing cap.

The GAO estimates that over $180 million per year in compensation costs could exceed a cap set at the President's salary, and at least $440 million per year if set at the Vice President's salary.

Employees with compensation costs in excess of the existing cap level were identified by the contractors; consequently, compensation costs for individuals below executive level would be increasingly affected by additional cap reductions. Most affected employees were at large-tier companies; few small-tier companies had employees exceeding these caps. The GAO's analysis found that of the number of affected employees over the past three years, in total across the 27 contractors reviewed:

- Fewer than 200 employees compensation costs each year exceed the existing cap level
- More than 500 employees compensation costs would exceed a cap set at the President's salary
- Over 3,000 employees would exceed a cap set at the Vice President's salary

Per the GAO report, the DoD acknowledges that, in the event the cap is reduced, it would at that point consider the need for an exception to the compensation cap for scientists and engineers. These individuals often play a critical function in executing and achieving DoD programs and missions. Thus, in order to attract and ensure the DoD has access and ability to obtain those critical skills and capabilities, DoD officials would consider establishing an exception to compensate those specialties appropriately.

The GAO report does not include any actionable next steps, but the DoD states "while it fully supports the principle of paying only reasonable compensation costs, it must avoid a policy that would drive away the talent needed to maintain strategic advantage and the national industrial base" The DoD cautions that there are limited data on the potential impacts of reducing the cap and cite the need for more research given the GAO's sample size. In addition, the DoD states in the event any new cap is introduced, the impact on the defense industry would need to be carefully monitored and assessed.

In its report, the GAO fails to address the definition of compensation or the fact that both the President and Vice President receive additional benefits—both current and deferred—beyond their respective salaries, which are not afforded to contractor personnel. •

GAO-13-383, Grants Management: Improved Planning, Coordination, and Communication Needed to Strengthen Reform Efforts (GAO Report GAO-13-383) (May 23, 2013)

BY: MARY KAREN WILLS AND LUKE MANCINI

The GAO recently completed a review of the Office of Management and Budget's (OMB) efforts to date in implementing the federal grants management reforms changes called for by the Federal Financial Assistance Management Improvement Act of 1999 (P.L. 106–107). In an effort to advance its goal of more effective grants management, OMB created the Council on Financial Assistance Reform (COFAR) committee and charged it with spearheading the federal grant reform process. The GAO audit focused on the progress made under this new governance structure and resulted in recommendations related thereto. In summary, GAO criticizes COFAR for a lack of progress and accomplishments related to grant streamlining and reforms.

COFAR replaces two former federal boards—known as the Grants Policy Committee (GPC) and the Grants Executive Board (GEB)—with a streamlined body better suited to accomplish the OMB's four primary goals stemming from the Federal Financial Assistance Management Improvement Act: 1) consolidate and revise grants management circulars; 2) simplify the pre-award phase; 3) promote shared IT solutions (such as a shared end-to-end grants management system); and 4) improve the timeliness of grant close-out to reduce undisbursed balances.

Under the previous two-board structure, the GAO undertook a study of the OMB grants administration system. This earlier study identified several discordant management challenges. Specifically, the "lack of a comprehensive plan for implementing reforms, confusion over roles and responsibilities among grants governance bodies, and inconsistent communication and outreach to the grantee community."

This GAO study concludes that not much has changed. COFAR still faces the same three issues that its bifurcated predecessors did. First, without a comprehensive plan for implementing the necessary reforms by way of specific targets, COFAR cannot measure its progress or realize its structural synergies to support grant reform. Second, various Government agencies that administer grants still do not have clearly defined roles in COFAR's initiatives, which greatly hinders their ability to add value. Third, while COFAR has made some token efforts to engage the grant community in its mission, it has not yet established an open dialogue with grant recipients. This both leaves a potential source of ideas untapped and may lead to "solutions" that end up more as practical hindrances.

Of course, the lack of progress is not news to current federal grant recipients. Little has changed since the passage of the Federal Financial Assistance Management Improvement Act in 1999, despite the change in grants management governance structure. However, the updated GAO study may catalyze the necessary changes. Recipients should advocate for the steps prescribed in the report, albeit from the other side of the table. Establishing a cooperative similar to the Federal Demonstration Partnership, made up of 10 agencies and over 90 research institutions, could create an ideal forum to pass ideas "up" to COFAR, allowing recipients to take the initiative with COFAR to open dialogue and make specific suggestions on how to streamline the grant lifecycle. Clearly define what you expect from the agencies administrating your grants, and the responsibilities you as the recipient wish to accept. COFAR cannot operate in an informational vacuum, and in light of this heated report they must act. This provides recipients with a unique opportunity to guide those actions in a constructive manner. •

Department of Defense Financial Management: Significant Improvements Needed in Efforts to Address Improper Payment Requirements (GAO Report GAO-13-227) (May 13, 2013)

BY: KELLY LYNCH AND GABRIELLA D'AGOSTO

On May 13, 2013, the GAO issued "DoD Financial Management: Significant Improvements Needed in Efforts to Address Improper Payment Requirements," a report regarding the DoD's implementation of key provisions of the Improper Payments Information Act of 2002 (IPIA), Improper Payments Elimination and Recovery Act of 2010, and the Office of Management and Budget's OMB A-123 requirements. The GAO found that DoD's improper payment estimates as reported in its FY2011 Agency Financial Report were unreliable and statistically invalid. This review follows a 2009 report by the GAO identifying significant improvements were required in the DoD's efforts to address the improper payment requirements of the IPIA and requirements of the Recovery Auditing Act.

For fiscal year 2011, the DoD reported over $1.1 billion in improper payments. Improper payments include both payments that should not have been made and payments made in an incorrect amount. Specifically of note to contractors is the $224.6 million of improper payments for Defense Finance and Accounting Service (DFAS) Commercial Pay, which represent payments by DFAS to contractors. Based upon the results of the GAO review, the amount of improper payments for DFAS could be understated as a result of the sampling methodology used by DoD.

The GAO report includes 10 recommendations to improve the DoD's processes around estimating, identifying, and reducing improper payments and implementing recovery audits The GAO report recommends, with DoD concurrence, that improper payment recovery audit procedures be implemented to identify improper payments. In the event that DoD overpayments are identified during recovery audits, they may result in interest being assessed on overpayments made by a contractor. Since the report calls for increased scrutiny on DoD payments, contractors should continue to focus on the timely identification and repayment of overpayments. •

KEY FEDERAL ACQUISITION REGULATION (FAR) UPDATES

FAR Interim Rule and Proposed Rule: Expansion of Senior Executive Compensation Benchmark Applicability (FAR Case 2012–017, FAR Case 2012–25)

BY: BRAD SMITH

The 2012 National Defense Authorization Act (NDAA) expands the existing executive compensation cap to all employees working for contractors holding DoD, National Aeronautics and Space Administration (NASA), and/or Coast Guard contracts (Section 803). Until the passage of this bill, "only the 'five most highly compensated' employees in management positions at each home office, and each segment," of these contractors were subject to the salary cap—which is currently set at $763,029.

This new requirement retroactively applies to contracts already in existence on the date of its enactment.

To implement this aspect of the law, the FAR Council is implementing both an interim rule and a separate proposed rule. The interim rule addresses only the "prospective application" of the universal salary cap (FAR Case 2012-017), whereas the proposed rule addresses only [its] "retroactive application" (FAR Case 2012-25). Both rules became effective as of June 25, 2013, though the council is seeking public comments on both in an effort to address their practical difficulty.

Contractors may remember that the 1998 NDAA had a similar provision (Section 808) that "imposed a cap on Government contractor's allowable costs of 'senior executive' compensation," and that a later court ruling invalidated this aspect of the law as a breach of contract (General Dynamics Corp. v. U.S.; and ATK Launch Systems, Inc.). Therefore, Section 803 may meet the same fate. As that has not yet occurred, contractors should immediately review their employee compensation for all DoD, NASA, and Coast Guard contracts active on or since December 31, 2011, to verify that compensation costs over $763,029 have not been claimed for any one em-

ployee, regardless of station. Any compensation costs in excess of the threshold on DoD, NASA, and Coast Guard contracts, for any single employee, are unallowable pursuant to the revisions to FAR 31.205-6, resulting from the interim rule changes—and must be credited to the Government immediately. •

FAR Final Rule: Price Analysis Techniques (FAR Case 2012–018)

BY: TED NEEDHAM

The final rule by the FAR Council, effective July 22, 2013, clarifies and provides a more precise reference to the use of a price analysis technique to establish a fair and reasonable price when proposed prices are received from multiple offers.

Specifically, FAR 15.404-1 now states:

> (b) Price analysis for commercial and non-commercial items.
>
> (2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:
>
> > (i) Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes a fair and reasonable price (see 15.403-1(c)(1)(i)) emphasis added.

FAR 15:40 B -1(c)(i) states that a price is based on adequate price competition if

> (1) two or more responsible offerers - competing independently - submit price offers satisfying the Government's expressed requirements
>
> (2) if award will be made to the offerer whose proposal represent best value where price is a substantial factor in source selection and
>
> (3) there is no finding that the price of the successful offerer is unreasonable. •

FAR Final Rule: Contracting Officer's Representative (FAR Case 2013–014)

BY: ZACHARY SCHOENHOLTZ

This final rule aims to improve contract surveillance by expanding the description of the contracting officer's representative (COR) responsibilities and appointment procedures in FAR 1.602-2(d) and FAR 7.104(e). The rule stems from a recommendation made by the DoD Panel on Contracting Integrity, which comprises senior-level DoD officials. The panel makes recommendations that target areas in the defense contracting system where fraud, waste, and abuse have been known to occur.

The new rule mandates that the COR be nominated by the requiring activity or in accordance with agency procedures, and be designated in writing that specifies the extent and duration of the COR's authority. The COR must also be a federal employee with adequate training and experience, and must maintain the FAR for Contracting Officer Representatives (FAC-COR). The COR may not be assigned responsibilities that have been delegated to a contract administration office. Lastly, the description clarifies that the COR does not have the authority to make changes to any contract terms or conditions (price, quality, quantity, delivery, etc.). This final rule was not published for public comment, as it applies only to internal Government operations regarding COR appointments and responsibilities and does not have a significant administration or cost impact on contractors. •

FAR Final Rule: Contractors Performing Private Security Functions Outside the United States (FAR Case 2011–029)

BY: HOMER WINTER

This final rule amends FAR 25.302-3 and 52.225-26 and helps ensure Government-wide consistency in the NDAA requirements. The NDAA establishes minimum processes and requirements for the selection, accountability, training, equipping, and conduct of personnel performing private security functions outside the United

States. Published by the FAR Council on June 21, 2013, and effective July 22, 2013, the final rule revises FAR 25.302-3(a)(3) so that the agreement of the Secretary of State is required for designations of an area of "other significant military operations." This revision matches the regulations prescribed at FAR 25.302-6(a)(1). Additionally, an "Applicability" paragraph was added to the contract clause at FAR 52.225-26 to address situations in which work is to be performed both within and outside of designated areas. If the contract is performed both inside and outside of designated areas, FAR 52.225-26 only applies to performance in the designated area. •

KEY DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) UPDATES

Proposed Rule: Forward Pricing Rate Proposal Adequacy Checklist (DFARS Case 2012–D035)

BY: KELLY LYNCH

On May 16, 2013, the DoD issued a proposed revision to the DFARS that would require contractors to submit a forward pricing rate proposal adequacy checklist with forward pricing rate proposals. Similar to the DFARS Proposal Adequacy Checklist implemented on March 28, 2013, this checklist is intended to ensure that offerors take responsibility for submitting thorough, accurate, complete, and current proposals.

The DoD indicated that this checklist will only affect a small percentage of Government contractors who are required to submit a forward pricing rate proposal, as set forth at FAR 42.1701(a). The contents of the checklist address the following requirements:

- FAR 15.407-1: Defective Certified Cost or Pricing Data
- FAR 15.408, Table 15-2: Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data Are Required
- DFARS 252.215-7002(d)(4): Cost Estimating System Requirements, including:
  - Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets
  - Protect against cost duplication and omissions
  - Integrate data and information available from other management systems
  - Provide procedures to update cost estimates and notify the Contracting Officer in a timely manner throughout the negotiation process

The checklist includes 27 items within the following categories: general instructions, direct labor, indirect rates, cost of money, and other. The checklist includes many of the same areas included in the DFARS Proposal Adequacy Checklist. It is suspected that the comments received will be similar to those provided for that checklist, which expressed concerns that the rule was duplicative to the Defense Contract Audit Agency's existing checklists and would result in increased costs and efforts to both the Government and contractors. •

DFARS Proposed Rule: Only One Offer – Further Implementation (DFARS Case 2013–D001)

BY: BRYANT LE

This case incorporates and simplifies aspects of two previous cases from 2011, and clarifies their applicability to procuring commercial items. The first DFARS Case (2011-D013) deals with "promoting real competition" in the bidding process. The second (2011-D049) clarifies specific data requirements for bids submitted by the Canadian Commercial Corporation (CCC)—an arm of the Canadian Government "mandated to facilitate international trade on behalf of Canadian industry, particularly within Government market." The DoD is seeking to streamline this by amending DFARS 252.215-7008, "Only One Offer," to include the appropriate requirements from FAR 52.215-20.

The proposed rule would require the CCC to submit data other than certified cost or pricing data when: 1) the pro-

curement item in question is commercially available; or 2) the Contracting Officer deems such data necessary to determine price reasonableness. The idea is that the incorporation of FAR 25.215-20 language into DFARS 252.215-7008 will clarify situations where the CCC—the trade of a friendly Government and close trading partner of the United States—is the sole offeror, while still allowing Contracting Officers to ensure that the pricing is fair and reasonable. •

DFARS Final Rule: Requirements for Acquisitions Pursuant to Multiple Award Contracts (DFARS Case 2012–D047)

BY: BRYANT LE

This rule is primarily administrative in nature. The 2002 NDAA included a section dedicated to "the use of competition in the purchase of services pursuant to multiple award contracts." To implement this requirement, the DoD issued a final rule (67 FR 65505) to amend the DFARS and encourage such competition. However, in 2009, Congress strengthened its call for competition by including a section in the 2009 NDAA that required that the FAR itself be amended to "require enhanced competition in the purchase of property and services by all executive agencies pursuant to multiple-award contracts." This call resulted in a corresponding change to the FAR (FAR Case 2007–012), which rendered the old 2002 DFARS final rule obsolete. Thus, a new DFARS final rule (DFARS Case 2012–D047) became necessary, essentially to repeal the old one and replace it with references to the new FAR section dealing with competition in multiple-award contracts.

In summary, this final rule "affects[s] only the internal operating procedures of the Government, and the rule does not create a significant cost or administrative impact on contractors or offerors." The rule provides a series of minor reference changes to the DFARS—in an effort on the part of the DoD to ensure that the DFARS remains congruent with both the FAR and revised NDAA requirements. Final rule DFARS Case 2012–D047 does not change compliance burdens for Government contractors. •

LATEST ON SEQUESTRATION AND GOVERNMENT SPENDING

OMB Final Sequestration Report to the President and Congress for Fiscal Year 2013 (Final Sequestration Report)

BY: BRAD SMITH

On April 9, 2013, the OMB delivered its Final Sequestration Report for Fiscal Year 2013 to the President and Congress. The report was prepared pursuant to section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) as amended.

The Congressional Budget Office (CBO) is required to report whether enacted legislation will exceed or has exceeded the caps on discretionary budget authority for each fiscal year. The caps on budget authority are currently set at $1,043 billion, broken out by security programs ($684 billion) and non-security programs ($359 billion). CBO's own estimation in March 2013 was that a sequestration will not be required for 2013. This is a tool that the OMB has available to use when determining if a sequestration is required and how the proportional cuts are to be made.

OMB, as required by Sections 254(f) (2) of the BBEDCA, summarized the status of the enacted "budget year" discretionary appropriations, relative to the discretionary caps. Their conclusion was that the budget authority limits set in BBEDCA of $3 million and $1 million for se-

curity and non-security, respectively, were not exceeded by the discretionary spending. Hence, OMB estimates, and reported to the respective officials, that sequestration will not be required for the security or non-security categories.

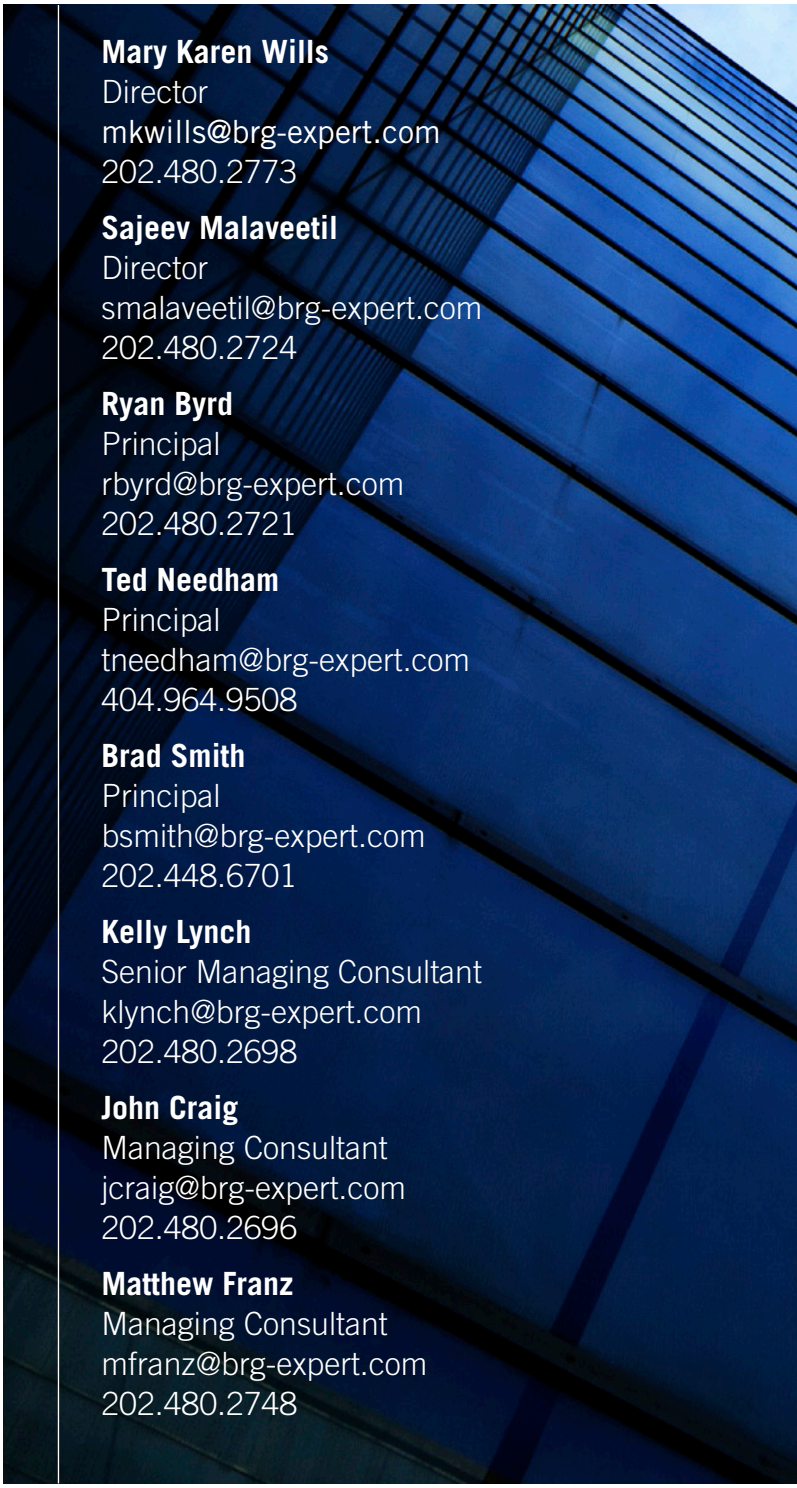
This does not impact the sequestration that was previously implemented in 2013 as a result of the automatic procedures to restrain discretionary and mandatory spending. Those budget reductions remain in effect for 2013 and will impact the discretionary caps and a sequestration of mandatory spending through 2021. •

BRG'S GOVERNMENT CONTRACT BLOG

Many of the items in this edition of the GovCon Research Report were first reported on our Government Contract blog. Please follow us at www.brggovconinsight.com for up-to-date information on Government Contract matters.

IN SUMMARY

If you have questions about specific items in this publication and would like to know more about how they apply to you, please feel free to contact one of our experts.



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BRG GOVERNMENT CONTRACTS ADVISORY SERVICES

Government contracting creates significant opportunities for many companies, but the accompanying regulations can present equally significant difficulties. A company's ability to navigate challenges while managing risk during the course of contract performance will determine its profitability and success.

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