



Acquisition Improvement and Accountability Act of 2007

Title VIII of the National Defense Authorization Act for Fiscal Year 2008 (H.R. 4986)

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Today's Agenda

- Background
- Compliance Matters
- Bid Protests
- Specialty Metals
- Export Controls
- Wartime Contracting
- Commercial Items and Services
- Audits, Disclosures, and Studies
- Lead Systems Integrators

Background

- Signed January 28, 2008; some provisions require new regulations to become effective
- Title VIII
 - Far-reaching acquisition policy reforms, *i.e.*, commercial item and task order contracting, audits, bid protests, compliance, enforcement, etc.
 - Some provisions are government-wide, others apply to DOD only
 - Other provisions: acquisition management and workforce training, interagency contracting, reducing contracts for acquisition support functions, inventories and studies of DOD service contracts



Compliance Matters

Sections 846-848

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Contractor Employee Whistleblower Protections – Section 846

- Protected disclosures expanded -- from a Member of Congress or DOJ to all IGs, the GAO, and DOD employees “responsible for contract oversight or management”
- Expanded to federal grants, not just federal contracts
- Protected information expanded from “information relating to a substantial violation of law related to a contract” to “information the employee reasonably believes is evidence of gross mismanagement of a DOD contract or grant, a gross waste of DOD funds, a substantial and specific danger to public health or safety, or a violation of law related to a DOD contract or grant”

Contractor Employee Whistleblower Protections – Section 846 (cont'd)

- Complainants now have a private right of action to challenge an IG's determination of no reprisal
 - *de novo* review in the District Courts
 - right to a jury trial
- Currently covered in FAR 3.9; still no contract clause, no contractor notice to employees

The Revolving Door – Section 847

- Covered DOD officials must request a written DAEO opinion on post-employment restrictions *before* employment with a DOD contractor
- Who is “covered”:
 - left DOD within two years and
 - participated personally/substantially in a procurement with a value > \$10M and served
 - in an ES, SES, or flag officer position and
 - was the PM, Deputy PM, PCO, ACO, SSA, member of the SSEB, or chief of a financial or technical panel

The Revolving Door – Section 847

(cont'd)

- DAEO has 30 days to issue a written opinion; database must be kept for at least 5 years; IG review of the DOD process
- DOD contractors shall not knowingly provide compensation to a covered DOD official without first determining that the former official has sought and received an agency ethics opinion
 - Knowing violations subject to administrative sanctions (e.g., cancellation of the procurement, rescinding the contract, suspension and debarment)

Contractor Ethics Programs – Section 848

- GAO to submit a report to the House and Senate Armed Services Committees on internal ethics programs of major DOD contractors
- GAO access under the GAO audit clause
- Major DOD contractor defined: any company that was awarded contracts by the DOD during FY 2006 in amounts over \$500M

Contractor Ethics Programs – Section 848

(cont'd)

Content of GAO report

- extent of contractor internal ethics programs
- availability of internal reporting mechanisms, such as contractor hotlines
- notification to contractor employees of external hotlines, *e.g.*, DOD IG (but not now required; see new FAR rule)
- notification to contractor employees of whistleblower protections under Title 10 (but not now required)

Contractor Ethics Programs – Section 848

(cont'd)

Content of GAO report (cont'd)


- ethics training programs
- internal audits and reviews
- self-reporting requirements to government officials
(but not now required; see proposed FAR rule)
- disciplinary actions
- management oversight

Contractor Ethics Programs – Section 848

(cont'd)

Content of GAO report (cont'd)

- the extent to which the DOD monitors or approves the ethics programs of major DOD contractors
- the advantages or disadvantages of legislation requiring that DOD contractors develop internal ethics programs and requiring that specific elements be included (see new FAR rule)



**Bid Protests:
Enhanced
Competition
Requirements for
Task and Delivery
Orders
*Sections 843, 844***

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Key Changes to Competition Rules for Task and Delivery Orders in Section 843

- Expands GAO bid protest jurisdiction to allow protests of large task/delivery orders on any ground
- Defines “fair opportunity to be considered” for large task/delivery orders on multiple award IDIQ contracts
- Limits agency discretion to award task/delivery order IDIQ contracts to a single source

Expanded GAO Bid Protest Jurisdiction

- ***Currently***

- Bid protests of task or delivery orders on IDIQ contracts are limited only to protests on the grounds that an order “increases the scope, period, or maximum value” of the contract

- ***New Rule***

- Allows GAO protests of large task or delivery order awards on IDIQ contracts -- on any ground of protest
- Applies to any **order** valued in excess of \$10 million

Expanded GAO Bid Protest Jurisdiction

(cont'd)

- ***Effective date***

- For multiple award contracts, expanded GAO bid protest jurisdiction applies to **orders** awarded 120 days after enactment (May 26, 2008)

- ***Sunset***

- Jurisdiction expires after 3 years

- ***Expected impact***

- Greater GAO protest volume
- More agency task/delivery orders of \$10 million or less, to avoid protest risk

Defines “Fair Opportunity to be Considered”

- ***Current rules for task/delivery orders on multiple award IDIQ contracts***
 - Agencies must provide “all contractors awarded” such contracts a “fair opportunity to be considered” for orders greater than \$3,000
 - “Fair opportunity to be considered” not well defined
 - Agencies not required to synopsise task/delivery order awards
 - Contractors may not even learn of task/delivery order awards

Defines “Fair Opportunity to be Considered” (cont’d)

- ***New Rule***

- Defines “fair opportunity to be considered” for task/delivery orders valued **over \$5 million**
- Agencies must provide “all contractors”
 - notice with a clear statement of agency needs
 - reasonable period to provide a proposal
 - disclosure of significant evaluation factors and subfactors
 - for best value awards, document stating basis for award
 - opportunity for post-award debriefing
- Still no requirement to synopsise task/delivery order awards
- Effective for **orders awarded** 120 days after enactment

Limits Discretion to Award Task/Delivery Order IDIQ Contracts to a Single Source

- **Currently:** statutory preference for multiple award task and delivery order contracts, rather than single source awards of such contracts
- **New Rule:** reinforces this preference
 - Limits agency discretion to award task and delivery order IDIQ contracts valued greater than \$100 million to a single source
 - requires written justifications for such single-source contracts

Section 844: Public Disclosure of J&As for Noncompetitive Contracts

- **Currently:** Agencies document Justification and Approvals (“J&As”) for using “other than competitive procedures” to award contracts (such as sole-source awards) and provide the J&As *through FOIA*
- **New Rule**
 - Agencies to make J&As “publicly available” on their websites and on a government-wide website
 - Deadline to post most J&As is 14 days after award (30 days for some awards)



Specialty Metals

Section 804

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Section 804 – Specialty Metals

- Provides a significant “clarification” of the rules governing use of specialty metals
 - New exceptions & waivers
 - Restricted use of DNADS
- Implemented the next day by Class Deviation 2008-00002 dated Jan. 29, 2008

New Exceptions – COTS

- Specialty Metal restriction does not apply to COTS items except:
 - acquisition of the specialty metal itself
 - acquisition directly of forgings or castings
 - high performance magnets
 - fasteners (*but* see special fastener rule)
- DoD to apply “offered without modification” rule only at time of acceptance by next higher tier
 - where military item substituted for commercially available option, only metal in military item counts

Commercial Derivative Military Articles

- Statute provides for “streamlined” compliance for items classified as “commercial derivative military articles”
 - secretarial level determination
 - contractors and subcontractors must enter into agreements to purchase domestically the greater of:
 - 120% of the specialty metal required to produce the commercial derivative; or
 - 50% of total specialty metal needed to produce both commercial derivative and associated commercial article in relevant period

Other New Exceptions

- Electronic components
 - no longer must qualify as “commercial item”
 - unless domestic availability critical to Nat’l Defense
- *De minimis*
 - may accept item if no more than 2% of the specialty metal is non-domestic *and* not otherwise exempt
- Commercial Item Fasteners
 - must certify that purchases at least 50% domestic metal, in “the required form”

Other Changes

- DNADs
 - tightened process
 - secretarial Determination
 - pre-publication
 - all prior class deviations revoked (good through July 26, 2008)
 - contract or program-specific DNADs survive
 - but may be modified by bilateral agreement
- DoD has abandoned interpretation that parts below 2d tier components are exempt when bought directly by DoD
- Restricts qualifying country purchases to “items”
 - no longer available for purchase of the specialty metal itself

Waivers

- Statute provides a “national security” waiver
 - must determine whether use of non-conforming metal was willful
 - if yes, DoD must consider debarment or suspension
 - in either case, contractor must develop a plan for compliance
- DoD no longer views acceptance of articles with non-conforming metal under the new statute as potential Anti-Deficiency Act violation



Export Controls

Section 890

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Section 890 – Export Controls

- Mandates regulation requiring any DoD contractor to comply with ITAR and EAR
 - must include a mandatory contract clause
 - must report to Congress within 180 days re feasibility of:
 - requiring contractor compliance reports;
 - requiring periodic compliance audits;
 - requiring contractors to perform regular corporate training; and
 - requiring appointment of corporate compliance liaison.

Existing Regulatory Consideration

- DFARS Case 2004-D010 has been pending since a 2004 DoD IG report
 - initial proposal roundly criticized by industry
 - second proposed rule has been pending since August 2006
 - continued requirement that CO identify whether contractor access to export controlled information would be required
 - requires compliance with export control statutes and regulations but removes requirements for specific features of a compliance program



Wartime Contracting

Sections 841, 842, 861, 862

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Wartime Contracting Commission

Section 841

- **Commission will have a bipartisan structure with 8 members:**
 - 2 members appointed by the majority leader of the Senate;
 - 2 members appointed by the Speaker of the House of Representatives;
 - 1 member appointed by the minority leader of the Senate;
 - 1 member appointed by the minority leader of the House of Representatives; and
 - 2 members appointed by the President, in consultation with the Secretary of Defense and the Secretary of State.

Wartime Contracting Commission

Section 841 (cont'd)

- **Two co-chairmen;** one each selected by majority and minority
- **The Commission shall study the following matters:**
 - Contracting for the reconstruction of Iraq and Afghanistan.
 - Contracting for the logistical support of coalition forces operating in Iraq and Afghanistan.
 - Contracting for the performance of security functions in Iraq and Afghanistan.

Wartime Contracting Commission

Section 841 (cont'd)

The Commission will assess--

- The reliance on contractors to perform functions (including security functions) in Iraq and Afghanistan and the impact of this reliance on the achievement of the objectives of the United States;
- Performance of reconstruction and security contractors and the mechanisms used to evaluate contractor performance;
- The extent of waste, fraud, and abuse under such contracts;
- The extent to which those responsible for such waste, fraud, and abuse have been held financially or legally accountable;

Wartime Contracting Commission

Section 841 (cont'd)

- The organizational structure, policies, practices, and resources of the Department of Defense and the Department of State for handling program management and contracting;
- The extent to which contractors under such contracts have engaged in the misuse of force or have used force in a manner inconsistent with the objectives of the operational field commander; and
- The extent of potential violations of the laws of war, Federal law, or other applicable legal standards by contractors under such contracts.

Wartime Contracting Commission

Section 841 (cont'd)

Powers and Authorities—

- Hold hearings, take testimony, receive evidence, administer oaths, and “provide for” the attendance of witnesses and the production of documents
- No direct subpoena power
 - Notify the relevant committees of Congress and appropriate investigative authorities if unable to obtain testimony and documents
- Refer to the Attorney General any violation or potential violation of law identified by the Commission in carrying out its duties

Wartime Contracting Commission

Section 841 (cont'd)

Key Dates-

- **INTERIM REPORT-** Due on March 1, 2009
- **FINAL REPORT-** Due not later than two years after the date of the appointment of all of the members of the Commission
- **COMMISSION EXPIRES** - 60 days after submitting final report

Wartime Contracting Commission

Section 841 (cont'd)

Presidential Signing Statement

- Section 841 “could inhibit the President's ability to carry out his constitutional obligations to take care that the laws be faithfully executed, to protect national security, to supervise the executive branch, and to execute his authority as Commander in Chief. The executive branch shall construe such provisions in a manner consistent with the constitutional authority of the President.”
- Impact on Presidential appointment of members
- Congressional reaction –
 - S. Res. 437 – Establish a Senate Special Committee on War and Reconstruction Contracting
 - The Presidential Signing Statements Act of 2007 (S. 1747)
- Politics and the impact of 2008 elections

INVESTIGATION OF WASTE, FRAUD, AND ABUSE IN WARTIME CONTRACTS AND CONTRACTING PROCESSES IN IRAQ AND AFGHANISTAN

Section 842 (cont'd)

- **Audits Required-** Thorough audits shall be performed to identify potential waste, fraud, and abuse in the performance of --
 - (1) Department of Defense contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan; and
 - (2) Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan.

INVESTIGATION OF WASTE, FRAUD, AND ABUSE IN WARTIME CONTRACTS AND CONTRACTING PROCESSES IN IRAQ AND AFGHANISTAN

Section 842 (cont'd)

- **Audit Plan** - Requires the DoD IG and the Special Inspector Generals for Iraq and Afghanistan Reconstruction to develop “a comprehensive plan for a series of audits of contracts, subcontracts, and task and delivery orders.”
- **Independence** - The audit functions shall be performed by the relevant Inspectors General in an independent manner, without consultation with the Commission.
- **Sharing Reports** - All audit reports resulting from such audits shall be available to the Commission.

MEMORANDUM OF UNDERSTANDING ON MATTERS RELATING TO CONTRACTING

Section 861

- The Secretary of Defense, the Secretary of State, and the Administrator of the United States Agency for International Development shall, not later than July 1, 2008, enter into a memorandum of understanding regarding matters relating to contracting for contracts in Iraq or Afghanistan.

MEMORANDUM OF UNDERSTANDING ON MATTERS RELATING TO CONTRACTING

Section 861 (cont'd)

Matters covered include -

- (1) Identification of the major categories of contracts in Iraq or Afghanistan being awarded;
- (2) Identification of the roles and responsibilities of each department or agency for matters relating to contracting;
- (3) Responsibility for establishing procedures for, and the coordination of, movement of contractor personnel in Iraq or Afghanistan;

MEMORANDUM OF UNDERSTANDING ON MATTERS RELATING TO CONTRACTING

Section 861 (cont'd)

- (4) Identification of common databases that will serve as repositories of information on contracts in Iraq or Afghanistan and contractor personnel in Iraq or Afghanistan; and
- (5) Responsibility for the collection and referral to the appropriate Government agency of any information relating to offenses:
 - Uniform Code of Military Justice
 - Military Extraterritorial Jurisdiction Act

MEMORANDUM OF UNDERSTANDING ON MATTERS RELATING TO CONTRACTING

Section 861 (cont'd)

■ Policies, Guidance, and Regulations

- Not later than 120 days after the MOU is signed, DoD, DoS, and USAID shall issue such policies or guidance and prescribe such regulations as are necessary to implement the MOU for the relevant matters pertaining to their respective agencies.
- Prior to the Act, DoD and DoS entered into an MOA on December 20, 2007 to define the authority and responsibility for the accountability and operations of USG private security contractors in Iraq. Available at:

<http://www.defenselink.mil/pubs/pdfs/Signed%20MOA%20Dec%2005%202007.pdf>

MEMORANDUM OF UNDERSTANDING ON MATTERS RELATING TO CONTRACTING Section 861(cont'd)

- **Report on Implementation**

- Not later than 180 days after the MOU is signed, the DoD, DoS, and USAID shall each provide a report to the relevant committees of Congress on the implementation of the MOU.

- **Databases**

- DoD, DoS, and USAID shall provide access to the common databases to the relevant committees of Congress.

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS

Section 862

- **Regulations:**
 - Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of State, shall prescribe regulations on the selection, training, equipping, and conduct of personnel performing private security functions under a covered contract in an area of combat operations.
 - Will not apply to contracts by intelligence agencies for intelligence activities.

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS

Section 862 (cont'd)

At a minimum, the regulations will establish--

- **Personnel Records** - a process for registering, processing, accounting for, and keeping appropriate records of personnel performing private security functions in an area of combat operations.
- **Weapons** - a process for authorizing and accounting for weapons to be carried by, or available to be used by, personnel performing private security functions in an area of combat operations.
- **Identification of Vehicles** - a process for the registration and identification of armored vehicles, helicopters, and other military vehicles operated by contractors performing private security functions in an area of combat operations.

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS

Section 862 (cont'd)

- **Reporting of Incidents** -- a process under which contractors are required to report all incidents, and persons other than contractors are permitted to report incidents, in which --
 - (i) a weapon is discharged by personnel performing private security functions in an area of combat operations;
 - (ii) personnel performing private security functions in an area of combat operations are killed or injured; or
 - (iii) persons are killed or injured, or property is destroyed, as a result of conduct by contractor personnel.

- **Independent Review of Incidents** -- a process for the independent review and, if practicable, investigation of --
 - (i) incidents reported; and
 - (ii) incidents of alleged misconduct by personnel performing private security functions in an area of combat operations.

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS

Section 862 (cont'd)

- **Qualification/Training** -- requirements for qualification, training, screening (including, if practicable, thorough background checks), and security for personnel performing private security functions in an area of combat operations.

- **Guidance to Combatant Commanders on the issuance of --**
 - (i) orders, directives, and instructions to contractors performing private security functions relating to equipment, force protection, security, health, safety, or relations and interaction with locals;
 - (ii) pre-deployment training requirements for personnel performing private security functions in an area of combat operations, including how such training will be implemented; and
 - (iii) rules on the use of force for personnel performing private security functions in an area of combat operations.

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS

Section 862 (cont'd)

Contract Clause on Contractors Performing Private Security Functions:

- **Revise FAR to add a contract clause specific to private security**
 - Not later than 180 days, revise the FAR to require the insertion into each covered contract (or, in the case of a task order, the contract under which the task order is issued) of a contract clause addressing the selection, training, equipping, and conduct of personnel performing private security functions under such contract.
- **Content of Clause – at a minimum, the clause shall require that the contractor --**
 - Comply with the regulations to be promulgated, including any revisions or updates to such regulations, and follow the procedures established in such regulations for--
 - records on personnel providing private security;
 - authorizing and accounting for weapons;
 - registering and identifying vehicles; and
 - reporting of incidents.

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS

Section 862 (cont'd)

- **Briefing of personnel** – brief personnel performing private security functions to ensure they understand their obligation to comply with --
 - qualification, training, screening, and security requirements;
 - applicable laws and regulations of the United States and the host country, and applicable treaties and international agreements;
 - orders, directives, and instructions issued by the applicable commander of a combatant command relating to equipment, force protection, security, health, safety, or relations and interaction with locals; and
 - rules on the use of force issued by the applicable commander of a combatant command for personnel performing private security functions in an area of combat operations.

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS

Section 862 (cont'd)

– Cooperation with Review of Incident Reports

- Cooperate with any investigation conducted by the DOD of an incident by providing access to employees of the contractor and relevant information in the possession of the contractor regarding the incident concerned.
- The statute's "cooperation" provision is a lesser version of the proposed FAR rule requiring notice to the CO and IG when a contractor has a "reasonable" basis to believe there has been a violation of federal criminal law in connection with a federal contract or subcontract.

– Noncompliance of Personnel With Clause

- The CO may direct the removal or replacement of personnel at contractor's cost.
- If the violation or failure to comply is a gross violation or failure or is repeated, the contract may be terminated for default.

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS IN AREAS OF COMBAT OPERATIONS

Section 862 (cont'd)

- **Report on Pilot Program to Impose Fines for Non-Compliance of Personnel with Clause**
 - Not later than March 30, 2008, the DoD IG shall submit to Congress a report assessing the feasibility and advisability of carrying out a pilot program for the imposition of fines on contractors for personnel who violate or fail to comply with applicable requirements of the clause required by this section as a mechanism for enhancing the compliance of such personnel with the clause.



Commercial Items & Services Contracts

Sections 805, 814, 815, 821, 822

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Procurement of Commercial Services

Section 805

- Requires modification of DOD regulations governing procurements for commercial services by DoD *or on behalf of the DoD*
- When: within 180 days after enactment of the Act – by July 28, 2008
- Modified regulations must:
 - ensure that commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, may be treated as commercial items ONLY IF the contracting officer determines *in writing* that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the prices for such services.
- To make this determination, CO may request that the offeror submit:
 - prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers
 - if necessary, CO may also request “other relevant information” regarding the basis for price or cost, including information on
 - labor costs
 - material costs
 - overhead rates

Procurement of Commercial Services

Section 805 (cont'd)

- Requires modified DoD regulations regarding time-and-materials contracts and labor-hour contracts
- Limits use of T/M and labor hour contracts to:
 - services procured for support of a commercial item
 - emergency repair services
 - any other commercial services, but only to the extent that the head of the agency approves a determination *in writing* by the CO showing that
 - the services are actually commercial services as defined in 41 U.S.C. § 403(12)(F);
 - the services are commonly sold to the general public through use of T/M or labor hour contracts; and
 - the use of T/M or labor hour contract type is in the best interest of the Government.

Submission of Cost and Pricing Data for Non-commercial Modifications of Commercial Items Section 814

- Generally, the submission of certified cost or pricing data is not required in the case of a contract, subcontract or modification of a contract or subcontract for the acquisition of a commercial item
- But, the general rule is not applicable to non-commercial modifications of commercial items that were expected to cost, in the aggregate, more than \$500,000 or 5% of the total price of the contract, whichever is greater
- New regulation:
 - requires that the determination of contract price for purposes of the exception be made as a function of what cost expectancies were at the time of contract award

Clarification of Rules Regarding the Procurement of Commercial Items

Section 815

- Amends 10 U.S.C. § 2379 – Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items
- Allows for the treatment of Subsystems, Components, and Spare Parts as commercial items

Clarification of Rules Regarding the Procurement of Commercial Items

Section 815 (cont'd)

- Subsystems as Commercial Items
 - A subsystem of a major weapon system (other than a COTS item) shall be treated as a commercial item and purchased under procedures established for the procurement of commercial items *only if*:
 - the subsystem is intended for a major weapon system that is being purchased, or has been purchased, under procedures established for the procurement of commercial items; or
 - the contracting officer determines *in writing* that the subsystem is a commercial item and the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the subsystem

Clarification of Rules Regarding the Procurement of Commercial Items

Section 815 (cont'd)

- Components and Spare Parts as Commercial Items

A component or spare part for a major weapon system (other than a COTS item) may be treated as a commercial item *only if*

- the component or spare part is intended for a major weapon system or subsystem of a major weapon system is being purchased, or has been purchased, under procedures established for the procurement of commercial items;

--OR--

- The CO determines *in writing* that
 - the component or spare part is a commercial item as defined in 41 U.S.C. §403(12); and
 - the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the component or spare part

Clarification of Rules Regarding the Procurement of Commercial Items

Section 815 (cont'd)

- Components and Spare Parts as Commercial Items (cont'd)
 - Subsection 815(c) applies only to components and spare parts that are acquired by the DoD through a prime contract or a modification to a prime contract (or through a subcontract under a prime contract or modification to a prime contract on which the prime contractor adds no value or negligible value)

Clarification of Rules Regarding the Procurement of Commercial Items

Section 815 (cont'd)

- Contracting officers may request additional information in order to evaluate price reasonableness of subsystems, components and spares of major weapons systems
- COs may request that the offeror submit
 - prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers; and
 - if the CO determines that the information above is not sufficient, the CO may also request other relevant information regarding the basis for the price or cost, including
 - labor costs
 - material costs
 - overhead rates

Plan for Restricting Government-unique Contract Clauses on Commercial Contracts

Section 821

- Government-unique contract clauses on commercial items will be limited to:
 - clauses authorized by law or regulation; and
 - clauses that are “relevant and necessary” to a specific contract

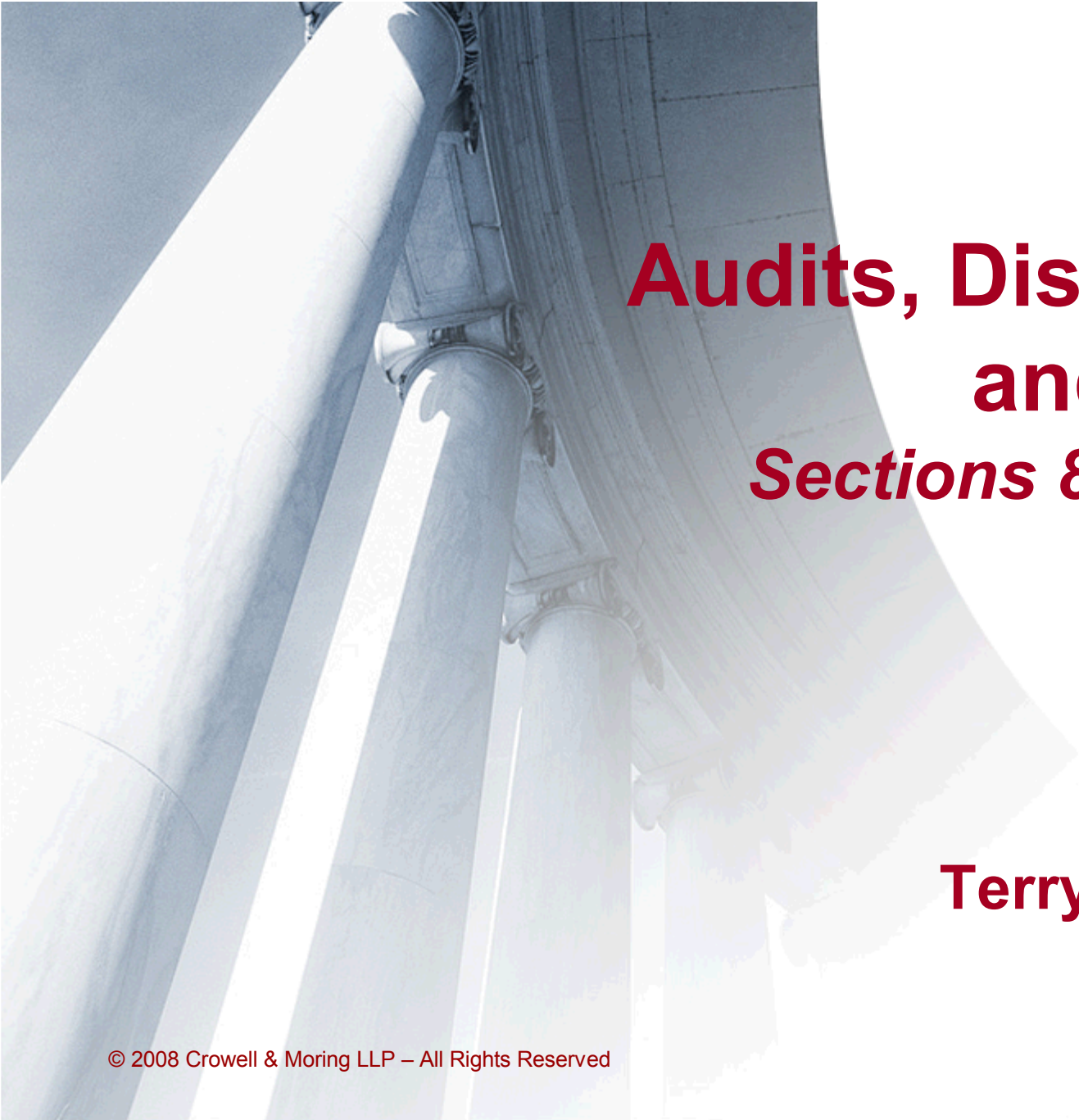
Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items Section 822

- Extends until January 1, 2010 the authorization to issue solicitations for purchases of commercial items in excess of the simplified acquisition threshold

Green Procurement Policy

Section 888

- **The Government is going “GREEN”**
- “It is the sense of Congress that the Department of Defense should establish a system to document and trace the use of environmentally preferable products and services.”
- Secretary of Defense must submit to Congress a report on a plan to increase the usage of environmentally friendly products at all DoD facilities – including through the direct purchase of products and the purchase of products by facility maintenance contractors.



**Audits, Disclosures,
and Studies**
Sections 801, 844-845

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Disclosure of Audit Report Findings

- Under Section 845, final audit reports containing “significant audit findings” must be included in the semiannual reports submitted by each IG to Congress
- DCAA audits to be included in DOD IG report
- IG report must describe the nature of the audit findings and the amount at issue
- No disclosure of information subject to FOIA protections
- Significant audit reports to be provided in full text to Congress on request
- Significant finding means finding in excess of \$10M or other findings that the IG “determines to be significant”

Other Audit and Disclosure Issues

- Section 844 requires publication on agency and government-wide websites of each justification and approval for a noncompetitive procurement, except for information protected from disclosure under FOIA
- Section 801 requires IG reports on non-defense agency compliance with DOD procurement requirements in procurements on behalf of DOD and prohibits such procurements if the non-defense agency is not compliant



Lead Systems Integrators *Section 802*

Terry L. Albertson

Limitations on Lead Systems Integrators

- Section 802 prohibits new DOD contracts for Lead Systems Integrators after 10/1/2010
- New contracts before 10/1/2010 allowed only if the contractor is already performing such a contract and the Secretary of Defense determines in writing that it is not practicable to discontinue
- Contracts for acquisition support functions are not prohibited, but the contractor may not recommend award of a major weapon system to an entity owned in whole or in part by the contractor



Questions

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