What Will the New Year Bring for Government Contractors?

Crowell & Moring Webinar

The webinar will begin shortly. The slides will be made available to you shortly after the webinar.

January 12, 2011
Policy and Procurement Climate
Stan Johnson and Richard Arnholt

- Spending trends and priorities
- Status of administration’s acquisition reforms
- Legislative & regulatory focus
- War on contractors
- Impact on contracting industry
Policy and Procurement Climate
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Reduce, Reuse, Recycle

- Efforts at significant spending reductions
  - Fiscal responsibility/austerity
  - Entitlements harder to cut than discretionary spending
  - DoD - reduced spending, program terminations

- Focus on greening the government?
  - EO 13514 -"Federal Leadership in Environmental, Energy, and Economic Performance"
  - GSA found feasible for suppliers to report greenhouse gas emissions; green building initiatives; forthcoming DoD report
Policy and Procurement Climate

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The Government’s 2011 Shopping List

- Needs are evolving
  - Move away from the “tip of the spear”
  - Cyber-security
  - Intelligence support
  - Efficiency through IT improvements (consolidation, cloud computing)

- Renewed attention to infrastructure
  - Massive infrastructure investments required
  - Fiscal constraints – PPPs the only option?
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Administration’s Acquisition Reform

- Limit private sector interaction (lobbyists)
- Increased transparency
  - New reporting requirements – FAPIIS, Recovery Act; greater accessibility to procurement information

Labor Initiatives

- Insourcing and High Road slowed
- Problematic implementation of project labor agreements; GAO protests; GSA’s Procurement Instructional Bulletin 09-02
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Legislation & Regulations in 2011

- FY11 DoD Authorization Act
  - Restrictions on use of quotas for insourcing
  - Oversight/accountability of private security contractors
  - Extension of task order protest jurisdiction to 2016
  - DoD must develop and manage a “highly skilled professional acquisition workforce”
  - Recommend how to reduce barriers for non-traditional suppliers

- 2011 regulatory/legislative agenda
  - OCIs, insourcing, labor initiatives, cyber security
Policy and Procurement Climate

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War on Contractors

- Congressional oversight
- DCAA audits of internal controls
- Quick-draw suspension and debarment officials
  - Suspend first, ask questions later
  - Lower standard for S/D:
    - Failure of internal controls = suspension?
- Expansive Interpretation of False Claims Act

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Bid Protests
Dan Forman and Puja Satiani

- GAO docket and ramifications
- GAO Task Order jurisdiction
- Potential new protest issues
Cost and Business Systems Issues
*Terry Albertson and Linda Bruggeman*

- Dependent health care costs
- Possible applicability of CAS to foreign contractors
- DCMA/DCAA joint effort to "disposition" old issues
- DCAA/DCMA business systems reviews
Conflicts of Interest

Peter Eyre

- Organizational conflicts of interest
- Personal conflicts of interest
Small Business Issues

Amy O’Sullivan and Gunjan Talati

- Risk for large businesses
- Limitation on subcontracting
- Future of ANCs
Government IP Issues

John McCarthy

- Bayh-Dole Supreme Court case
- Proposed amendment to DFARS
Labor and Employment Issues
Rebecca Springer

- New areas of enforcement
- OFCCP push to expand jurisdiction
Theories of liability: Continued use of popular theories as well as application of novel theories

Increased oversight by the government . . . and by the public
International
Adelicia Cliffe

- BAA/TAA enforcement
- Export control reforms
Middle East Contracting

Robert Nichols

- New areas of enforcement
- Contractor-initiated claims
- Local law
Procurement Fraud

Bob Rhoad, Kelly Currie, and Jon Cone

- Increased False Claims Act Enforcement
  - FERA & PPACA Amendments
- FCA Enforcement Trend
- FCPA Enforcement Trend
- 2010 UK Bribery Act
Procurement Fraud
Bob Rhoad, Kelly Currie, and Jon Cone

New FCA Matters 2005-2010
Procurement Fraud
Bob Rhoad, Kelly Currie, and Jon Cone

Trend In FCPA Enforcement

- SEC
- DOJ

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UK Bribery Act: FCPA On Steroids

- Effective April 2011
- Covers both Commercial Bribery and Bribery of Foreign Officials
- Crimes:
  - “General” offenses: Giving or Accepting a Bribe
  - Bribe or offer to bribe a Foreign Public Official
  - Corporate Offense for Failing to Prevent Bribery
    - Defense: Adequate Procedures to Prevent Bribery
- Broad Extraterritorial Jurisdiction
- Penalties: Unlimited fines; 10 years in prison
- Possible Debarment/Suspension
Discussion

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