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Strategizing for

GOVERNMENT CONTRACTORS' GAME PLAN

**Under the
New Administration**



Suspension & Debarment, Ethics & Compliance, Disclosures

Peter Eyre

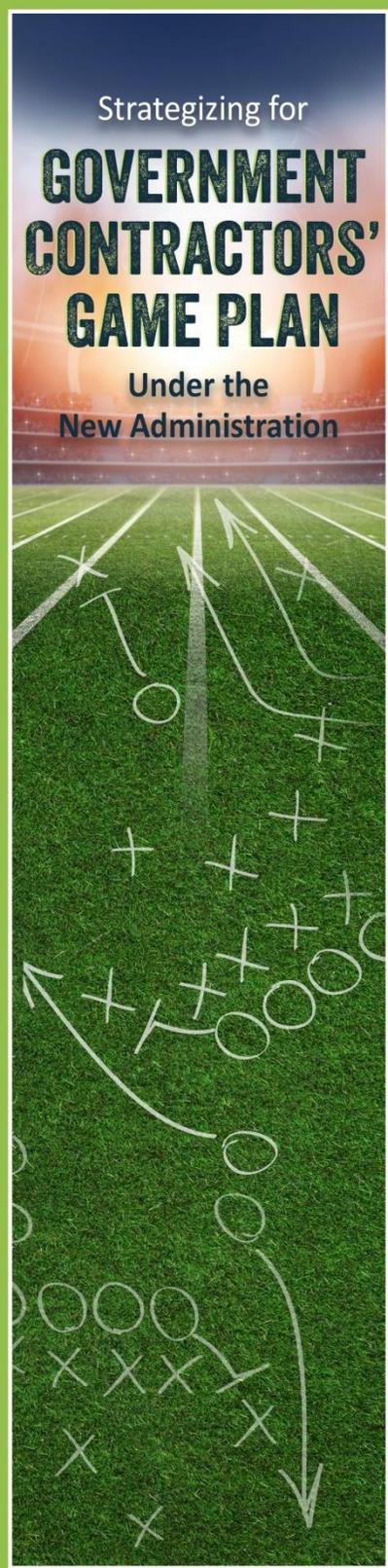
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Agenda

- A view from the Navy SDO
- Expansion of mandatory disclosures
- Labor & employment law convergence with government contracts law
- Other developments relating to ethics and compliance risks



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A View From the Navy SDO

The viewpoints expressed by Ms. Kessmeier are her own, and do not necessarily reflect those of the Department of the Navy or the Department of Defense.

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Mandatory Disclosure Regime Expansion

- Since the 2008 FAR Mandatory Disclosure Rule, new disclosure regimes continue to emerge, including
 - Combatting Trafficking in Persons
 - Avoidance of Counterfeit Parts
 - Cyber incidents and data breach
- New case law (particularly implied certification) necessitates a more granular analysis of whether there is “credible evidence” of a violation of the civil False Claims Act

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L&E, Whistleblower Protections and Government Contracts Law

- Increasingly active DoL debarment efforts
- Whistleblower protections codified and made permanent
- Whistleblower reprisal matters and GAO audit
- Internal-to-government cross-reporting resulting from Fair Pay & Safe Workplaces increases enforcement risk

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Revolving Door Issues

- Highlights of New Executive Order issued by President Trump
 - Bans executive branch appointees from engaging in “lobbying activities” with respect to the former agency for five years post-employment
 - Lifetime ban on “lobbying” for foreign government or political parties
 - Unlike Obama-era Executive Order, this Order does not impose a two-year ban on appointees representing back to their agency; reverts back to 18 USC § 207(c)

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Marketing to the Federal Government

- 2017 Changes to Gift Rules
 - Imposes duty on federal government employees to decline otherwise permissible gifts if it would give rise to the appearance of impropriety
 - Changes to definitions of “gift” and “market value”
 - Changes to exceptions to the prohibitions for the acceptance of gifts

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Anti-Kickback Act

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- 41 USC § 8702: Cannot provide, attempt to provide, offer, solicit, accept, or attempt a kickback.
- Kickback is defined as any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided to a prime contractor, prime contractor employee, subcontractor, or subcontractor employee to improperly obtain or reward favorable treatment in connection with a prime contract or a subcontract relating to a prime contract.
- 41 USC § 8702 provides for corporate liability against entity “whose employee, subcontractor, or subcontractor employee violates section 8702 of this title by providing, accepting, or charging a kickback.”

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- Fifth Circuit decision in *United States ex rel. Vavra v. Kellogg Brown & Root, Inc.* (Feb. 3, 2017)
- Holds that corporations are liable “for the knowing violations of those employees whose authority, responsibility, or managerial role within the corporation is such that their knowledge is imputable to the corporation.”
- Decision permits recovery of twice the amount of each kickback plus \$11,000 for each occurrence of a prohibited conduct.

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Anti-Kickback Act

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- Statute and regulation require:
 - Contractors must have in place reasonable procedures designed to prevent and detect violations of the Anti-Kickback Act.
 - Mandatory reporting obligation if “a prime contractor or subcontractor has reasonable grounds to believe that a violation of the Anti-Kickback Act” may have occurred.

Contacts

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