

What Will the New Year Bring?

Top Headlines, Headaches, and Developments
for Government Contractors to Watch in 2014

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Costs and DCAA

- Anticipate continued statute of limitations problems due to audit backlogs
- Expect more limitations on contractor compensation
- Understand how to handle costs associated with discovery and remediation of counterfeit parts
- Expect more DCAA challenges to reasonableness under cost reimbursement contracts



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Claims, Disputes, and Contractor Recovery

- Post-shutdown recoveries
- Continued “down hill” effects of tightened budgets
- Terminations, de-scopes, and other changes
- Protecting recovery rights and mitigating risks



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Suspension and Debarment

- Uptick in suspension/debarment activity likely to continue through 2014
 - Actions by agencies historically not active
 - New types of fact-based actions
- Increased coordination of remedies
- Role of Congress
 - SUSPEND Act
 - Push for new causes for mandatory suspension and debarment



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Compliance and Ethics

- Focus on compliance and ethics as distinct, but essential and inextricably linked, subjects
- Expanding compliance and ethics risk areas
 - HR, labor, employment
 - Procurement and supply chain
 - Information technology
 - Environmental, health, safety
- Renewed focus on internal investigations and mandatory disclosure rule



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Cybersecurity and Privacy

- Cybersecurity compliance & risk management
 - Security incident response & reporting obligations
 - IT Governance
- Cybersecurity Executive Order Implementation
 - NIST Cybersecurity Framework
 - Cyber threat information sharing
- DoD Cyber Rule Proliferation
 - DFARS “Safeguarding” Rule
 - DoD Cyber Patchwork: § 941, Policies & Flow down
 - DIB organizational and threat changes
- Data Breach Aftermath for Contractors
 - Cure notices, adverse past performance, lost awards, class actions, shareholder actions, FCA suits, & more



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OFCCP

- The new VEVRAA and Section 503 regulations
 - Self-identification of veteran and disability status
 - Utilization goals and hiring benchmarks
 - Outreach efforts
 - Flow-down clauses
- Preparing for the March 24, 2014 effective date
 - Recruiting and HRIS systems
 - Policies and procedures
 - Documentation and recordkeeping
- Enforcement activity – what to expect in 2014



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Small Business

- Limitations on Subcontracting - Changed and Changing Calculations
 - Effective 12/31/13 - new period of time for determining compliance and new regulatory provision addressing requirements on orders
 - Awaiting implementation of significant calculation changes from FY13 NDAA
- Continued Spotlight on Suspension and Debarment
 - MicroTechnologies proposed debarment and the “Washington Post effect”
 - Vulnerability and implications for individuals, subcontractors, and other related entities
- DOT Crackdown on DBE Program Compliance
 - Trickle-down effect of DOT pressure on state/local agencies
 - Imposition of heightened standards and new compliance challenges
- Awaiting Expansion of Mentor-Protégé Program



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Data Rights

- Continued aggressive government pursuit of IP rights
- Commercial software service providers and licensors beware
 - Terms of service/license restrictions
- Is this the year for the implementation of Section 815 of the 2012 NDAA?
- Is this the year for the final rewrite of the DFARS data rights regulations?



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Bid Protests

- 2013 GAO Bid Protest Report to Congress Reflects Impact of Heavy Caseload and Understaffing
 - Second most total cases filed in GAO history; more cases than ever resolved via voluntary agency corrective action (over 660, 26%).
 - Reduced frequency of hearings continues; down 72% since 2009.
- Interesting Substantive Trends in Bid Protest Decisions Portend New Frontiers for Future Bid Protests
 - **GAO:** Expanding view of when an agency is required to conduct a price-realism review in firm, fixed-price procurements. Where RFP warns that a proposal may be rejected if a low price reflects a lack of technical competence or failure to comprehend the requirements, a price realism evaluation is required even if not called for by name.
 - **COFC:** New recognition that contract awardees may challenge the scope of corrective action taken by an agency, including when the agency is adopting GAO's recommended corrective action steps; increased recognition that awardees have powerful equitable position to mitigate impact of its price being disclosed during initial award announcement.



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International Issues - Inward

- Domestic Preferences vs. Global Sourcing Imperatives
 - Treatment of Software in the Substantial Transformation analysis
 - Expansion of application to grant programs
 - Aggressive enforcement
- CFIUS Review of Foreign Investment
 - Uptick in M&A likely to expand docket
 - If Smithfield Ham implicates Nat'l Security, what doesn't?
 - *Ralls Corporation* effort to obtain judicial review



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International Issues - Outward

- International Sales and Offsets
 - Increased focus on selling to foreign governments & markets
- Export Controls & Sanctions
 - ECR in 2014
 - Last 8 USML Categories to be completed?
 - Sanctions Abound
 - Iran at crossroads
- FCPA Enforcement
 - Things of Value
 - Charitable contributions
 - Jobs for relatives
 - More trials; more judicial decisions addressing problematic issues under the Act



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Procurement Fraud

- False Claims Act and *qui tam* enforcement – statistics and trends
- False Claims Act cases to watch – Supreme Court and Circuit Courts
- Legislative Initiatives – U.S. Chamber of Commerce



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