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Recent Regulatory matters that may be of interest since the last Update include---

- On April 13, 2004, Ron Poussard Deputy Director for the Defense Acquisition Regulations System reported on the status of the DFARS Transformation efforts including the fourteen proposals published in the "Federal Register in February 2004, with a request for public comments by April 23, 2004. One of the proposed changes establishes the framework for a new DFARS companion resource, Procedures, Guidance, and Information (PGI), which will contain internal DoD procedures that do not significantly affect the public. PGI will be openly available on the World Wide Web, will be electronically linked to the DFARS, and will permit rapid dissemination of information to the acquisition community. We (DoD) expect to publish 70 more DFARS Transformation proposed changes before the end of FY04. Four of the legislative proposals, recommending improvements in the areas of task and delivery order contracts, ball and roller bearings, totally enclosed lifeboats, and information to cooperative agreement holders, were cleared by OMB for consideration in the FY05 National Defense Authorization Act. We are planning to acquire a DFARS Transformation Integrated System (DTIS), which will provide an integrated electronic solution for the development, issuance, and management of our acquisition regulations. A competitive RFP for the DTIS concept and demonstration was issued in February 2004, and we are presently evaluating the proposals received. We have reached agreement with OMB that DTIS will serve as a collaboration and workflow model for the Federal e-rulemaking initiative." (emphasis added)
- On May 21, 2004, the Federal Register noticed a proposed change to the FAR 31.205-16 cost principle ("Gains and losses on disposition or impairment of depreciable property or other capital assets"). "In particular, the Councils are recommending that the date of disposition for a sale and leaseback arrangement be the... date of the sale and leaseback arrangement, rather than at the end of the lease term." Comments are due on/before July 20, 2004.
- On May 20, 2004, Deidre Lee, Director of Defense Procurement and Acquisition Policy, issued a memorandum on "Emergency Procurement Flexibilities" wherein she provided some of the flexibilities/options that are available "for acquisitions that support urgent situations and national security requirements."  
**COMMENT:** Must reading for acquisition professionals in this wartime environment!

- The DCAA has posted (<http://www.dcaa.mil/>) memoranda that may be of interest to “impacted” contractors. For example, the April 21, 2004, memo on “Audit Management Guidance on DMIS Requirements Related to Wide Area Work Flow” includes a spreadsheet that “contains a list of contractors who are identified as not participating or are ineligible for direct billing in DMIS but have ... been identified ...(incorrectly) as being direct bill eligible.” And, there is the April 12, 2004, memo on “Audit Guidance on Compensation Costs for Contractor Employees Located in Foreign Countries and Performing Work under Iraq Reconstruction Contracts” which provides guidance (and a DCAA survey result of 37 contractors) in evaluating a “contractor’s base and/or special overseas pay and the various employee overseas allowance, differentials, (and) bonuses” under applicable cost principles.

**COMMENT:** Are contractors concerned that their cash flow is being affected by being listed as being ineligible for direct bill? And, on the subject of allowability of overseas compensation should one look at having an advance agreement under the FAR?

- An industry/government meeting conducted on March 31, 2004, on the Unique Item Identification initiative (interim rule effective January 1, 2004) resulted in the “following issues which the government will continue to work with industry:

- 1 How should the UID/Rfid cost be recovered—Should costs be included in forward pricing rates negotiated by ACO's, or determined on contract by contract basis by each individual PCO?
- 2 If and when should UID/Rfid costs be spread among accounting periods versus expensed in a single accounting period?
3. How should UID/Rfid costs be allocated to contracts and what are the causal/beneficial relationships between the costs and contracts?
4. Can a contractor use an indirect cost pool that is liquidated against contracts is such liquidation permitted by the Cost Accounting Standards and appropriations law?”

**COMMENT:** How have you resolved these types of issues?

- Last month’s Regulatory Update noted that certain free trade agreements under negotiation by the United States could cause “local/state ‘preferences’ in contracting to be preempted.” The Wall Street Journal reported on May 14, 2004, “at least four (state) governors have pulled out of an agreement with US trade officials committing their state to abide by trade pacts that would bar giving preference to local businesses or restricting outsourcing.”

**COMMENT:** Considering past trends in trade negotiations on preemption with the role of the federal government in regulating international trade, stay tuned on how local/state preferences fare in this election (job outsourcing) year.

- If “you” think that an IDIQ contract (under SBA's 8(a) program) with a limitation of cost clause (FAR 52.232-20) does not apply on an individual basis to delivery orders placed thereunder, then “look” at ANALYSAS CORPORATION, ASBCA No. 54183, May 12, 2004.

- The Air Force has issued its February 2004 version of its CONTRACTOR PERFORMANCE ASSESSMENT REPORTING SYSTEM (CPARS) guide which is “one of many tools used to communicate contractor strengths and weaknesses to source selection officials and contracting officers,” i.e. is embodies source selection information/action.  
**COMMENT:** And this does not have a significant impact on the public which requires Federal Register publication? Where is the requisite regulatory oversight when it is needed?
- And, the Navy has issued under a memorandum of April 29, 2004, its "Desk Guide for Service Contract Price Adjustments" (30 April 2004). The stated purpose of the Guide “is to provide guidance to Navy contracting officers for processing price adjustments that result from changes in wage determinations issued under the Service Contract Act, or other amendments changing the minimum wage required by the Fair Labor Standards Act. (A Navy professional adds) this is a ‘great, how-to guide and reference source’ on price adjustments under the Service Contract Act.”  
**COMMENT:** Ditto with the last comment! Or, as a reader has suggested in an analogous situation, “Looks like another case of obscuring how the agency does business internally (or at least not being involved in development of processes) so us outsiders won't know the process??” Or, should the public participate in the development of that business process which also impacts them? Rumor as it that the public may have constructive input from time to time.
- **COMMENT:** Notes from the May 14, 2004, Department of Homeland Security (DHS) and industry meeting on DHS implementation of the SAFETY Act suggests (notwithstanding assurances to the contrary) that it is going very slowly. And a May 3, 2004, briefing was conducted wherein a DoD representative was quoted as stating that “DoD will not use (Public Law) 85-804 for anti-terrorist technologies.” See prior Updates.
- And, the “best places to work” within the US Government is out—  
<http://www.bestplacetowork.org/>

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