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

- On June 18, 2004, the Federal Register noticed an interim FAR rule “to implement sections 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 1431 enacts Governmentwide authority to treat performance-based contracts or task orders for services as commercial items if certain conditions are met, and requires agencies to report on performance-based contracts or task orders awarded using this authority. Section 1433 amends the definition of commercial item to add specific performance-based terminology and to conform to the language added by section 1431.” Specifically, this interim rule (at FAR 12.102(g)(1)) provides that “the contracting officer also may use Part 12 for any acquisition performance-based contracting for services that does not meet the definition of commercial item in FAR 2.101, if the contract or task order--
 - (i) Is entered into on or before November 24, 2013;
 - (ii) Has a value of \$25 million or less;
 - (iii) Meets the definition of performance-based contracting at FAR 2.101;
 - (iv) Includes a quality assurance surveillance plan;
 - (v) Includes performance incentives where appropriate;
 - (vi) Specifies a firm-fixed price for specific tasks to be performed or outcomes to be achieved; and
 - (vii) Is awarded to an entity that provides similar services to the general public under terms and conditions similar to those in the contract or task order.”Comments are due on/before August 17, 2004.

- On June 8, 2004, the Federal Register noticed an interim DFARS rule “amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 844 of the National Defense Authorization Act for Fiscal Year 2004. Section 844 eliminates the requirement for a contractor to furnish written assurance that technical data delivered to the Government is complete and accurate and satisfies the requirements of the contract.” Comments are due on/before August 9, 2004.
- On June 28, 2004, the Federal Register noticed its semi-annual Regulatory Agenda which includes several “regulations-in-process” that are in the pipeline.

- DoD has published the following DFARS changes under the auspices of its “DFARS Transformation initiative” with comments due on/before 60 days from the date of notice of same:
 - DoD proposed on June 25, 2004, “to revise text regarding identification of contract awards under the Small Business Competitiveness Demonstration Program.”
 - DoD proposed on June 25, 2004, "to update text pertaining to selection of firms for architect-engineer contracts.”
 - DoD proposed on June 24, 2004, “to improve payment and billing instructions in DoD contracts... (by)
 - (i) Deletion of text at DFARS 204.201, 204.202, 204.7103-2, 204.7104-2, 204.7107, and 204.7108 addressing distribution of contracts and modifications; numbering of contract line items, subline items, and accounting classification references; and inclusion of payment instructions in contracts. Text on these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI)....
 - (ii) Clarification of the definition of ‘accounting classification reference number’ at DFARS 204.7101.
 - (iii) Amendment of DFARS 204.7103-1 to add text addressing contract type in the establishment of contract line items.
 - (iv) Amendment of DFARS 204.7106 to clarify that contract modifications decreasing the amount obligated shall not be issued unless sufficient unliquidated obligation exists or the purpose is to recover monies owed to the government.
 - (v) Addition of a clause addressing contract line item information needed in contract financing and interim payment requests.
 - (vi) Amendment of Material Inspection and Receiving Report instructions to address electronic submissions.”
 - DoD proposed on June 8, 2004, “to clarify requirements for reporting of contract performance outside the United States.”
 - DoD proposed on June 8, 2004, “to update text pertaining to the acquisition of commercial items.”

- On June 28, 2004, the Postal Service noticed it has issued “completely revised purchasing regulations, replacing the former U.S. Postal Service Procurement Manual with a new Postal Service Purchasing Manual. The Purchasing Manual focuses on using the purchasing process to further the business and competitive interests of the Postal Service.”

- On July 1, 2004, SBA is expected to withdraw its proposed restructuring of its size standards—see April 2004 Regulatory Update on proposed rule being withdrawn.

- DoD has posted slides (“Proceedings”) from its May 26-28 Procurement Conference, “Transformation of Defense Procurement—People, Policy, Processes,” at <http://www.dod-procurement.com/>
 Excellent presentations/slides (industry and government) include the following topics:
 - Acquisition Domain Strategic Vision
 - Transformation at Work (DoD), at industry (commercial sector), and within DoD workforce
 - Unique Identifiers (UID)
 - DFARS PG&I System Demo & AF Knowledge Management
 - Contracting in Iraq and Contractors in the Battlefield
 - Breakout Sessions on Strategic Sourcing for Acquisition of Services, Contingency Contracting - Boots on Ground Transformation, Small Business Initiatives/Preferred Sources, Purchase Card, Contractual Incentives, and Implementing Performance Based Logistics, etc.

- The AFFARS has posted its “Mandatory Procedures (MP) and Informational Guidance (IG) documents” on line at <http://farsite.hill.af.mil/VFAFFARA.HTM>. Recent “mandatory” items include... Other Than Full and Open Competition, Contract Audit Follow-up (CAFU), Formula Pricing Agreements, Small Business Program, Foreign Acquisitions, Protests to the GAO, and Bankruptcy.

- The Director of Defense Procurement and Acquisition Policy announced “her career-broadening Acquisition Exchange Program for government employees. The opening date for this round of current opportunities is June 23, 2004 with a closing date of July 23, 2004.” Information is available at <http://www.acq.osd.mil/dpap/workforce/exchangeprogram.htm>

- Other items of note:
 - “A Federal Supply Schedule contractor submitting a quote in response to a request for quotations that is limited to small business vendors must meet the applicable size standard when it submits the quote, the Small Business Administration Office of Hearings and Appeals decided June 1 (Advanced Management Technology Inc., SBA, No. SIZ-2003-11-25-71, 6/1/04).”
 - NAVAIR has out for internal comment a draft instruction on “Policy for Implementation of Unique Identification (UID) of Tangible Items” including suggested draft SOW language, etc.
 - On June 1, 2004, the Air Force issued Contracting Policy Memo 04-C-06 on “Contingency Contracting Community of Practice” and attachment, “Rules of Engagement.” Covered topics in this unclassified Practice (available through DAU) include improving various aspects of contingency planning, etc. associated with the global war on terrorism.

- A 2004 Rand publication, “Defining Needs and Managing Performance of Installation Support Contracts: Perspectives from the Commercial Sector,” has chapters on Recent Policy Emphasis on Performance-Based Acquisition (PBSA); Gathering Information from Leading Commercial Buyers and Providers of Facilities and Food Services; Research Findings on Services, Contract Types and the Use of Performance-Based Practices; and Implications for the Air Force. See <http://www.rand.org/publications/MR/MR1812/>

Future Speaking Topics Include—

- NCMA Puget Sound Chapter, “Baseball and Negotiations are Always In Season!”
- NCMA Los Angeles Gateway Chapter, “Negotiations...Baseball Style!”
- National Purchasing Institute, “How to get through Impasse—Can Baseball Arbitration be the Answer?”
- ISM Phoenix Affiliate, "How 'Baseball Arbitration' will help in Negotiating Sole Source Procurements--or how to get through Impasse."
- California State Bar Annual Conference, Monterey, California, “What Attorneys (and their Clients) *Really* Need to Know About Complex Business Arbitrations!”

Items summarized in all Regulatory Updates are for general informational/discussion/educational purposes only and should not be relied upon in the course of representation or in the forming of decisions in legal matters— independent counsel should be obtained.

Information on arranging speaking/teaching engagements in connection with the above items and/or various aspects of Alternative Dispute Resolution (ADR) and basic/advanced negotiation techniques— seminars/workshops—may be arranged by sending a message to ADROffice@rumbaugh.net