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

- On July 13, 2005, DoD noticed in the Federal Register a proposal to amend the FAR “by revising fast payment procedures. The proposed revision permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked ‘Fast Pay’ provided the contract includes the ‘Fast Payment Procedure’ clause. As highlighted in the proposed clause, if the clause is in the contract, the invoices will no longer be rejected, as is the current practice. Instead, they will be paid using either fast payment or normal payment procedures. In addition, the proposed revision deletes the requirement for marking invoices ‘No Receiving Report Prepared’.” Comments are due on/before September 12, 2005.
- On August 1, 2005, DoD noticed in the Federal Register a proposal to amend the DFARS “to add policy regarding notification of potential safety issues under DoD contracts. The proposed rule contains a contract clause requiring contractors to promptly notify the Government of any nonconformance or deficiency that could impact item Safety.... A new clause for use in contracts for (1) replenishment parts identified as critical safety items; (2) systems and subsystems, assemblies, and subassemblies integral to a system; and (3) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, and subassemblies integral to a system... requires the contractor to notify the administrative contracting officer and the procuring contracting officer within 72 hours after discovering or acquiring credible information concerning an item nonconformance or deficiency that may have a safety impact.” Subcontractor flow down is also required. Comments are due on/before September 30, 2005.
- On August 23, 2005, GSA noticed in the Federal Register a proposed rule on “adding ancillary Repair and Alteration (R&A) services to the GSA Schedules Program. The Federal Acquisition Regulation (FAR) describes R&A services as a subset of construction services. As such, the GSA Schedules Program has not been able to provide fully-integrated solutions that often involve R&A services.” Comments are due on/before October 21, 2005.

COMMENT: “Commercial construction services” may be part of the GSA.

- On July 26, 2005, DoD noticed in the Federal Register an interim rule that permits, in addition to those currently authorized pursuant to DFARS 231.205-70, the DCMA Director to make the requisite determination regarding business “restructuring costs” when they are expected to be less than \$25M over five years—calculated on a “present value” basis. Comments are due on/before September 26, 2005.
- Several DoD “Transformation Initiative” related items were published including the following “text updates”:
 - Application of labor laws to Government contracts.
 - Contract terminations.
 - Preparing Material Inspection and Receiving Reports.
 - Use of specifications, standards, and data item descriptions.
 - Government reviews of contractor insurance programs, pension plans, and other deferred compensation plans.
 - Contracting for construction services.
- The Spring 2005 issue of the ABA Public Contract Law Journal has an excellent article on the recent and “Evolving Case Study in Corruption, Power, and Procurement.”
- The NCMA Houston Space City chapter has posted recent material/slides on Award Term contracting including the approach of NASA on the topic: www.ncmaspacecity.org
- Finally, if you need to know more about the “color of money” rules for Operations and Maintenance funds, it is strongly recommended you read the July 2005 NCMA Contract Management magazine article by Janice Smets entitled, “Federal Fiscal Operations and Maintenance Funding Rules: What Contract Managers Need to Know!”

Decisions/Items of potential interest in contract negotiation, drafting, and contract management—

- The July 1, 2005, 4th Circuit Court opinion in Roanoke Cement Co. v. Falk Corp. (04-2047) presents an interesting case involving purported “additional terms and conditions” flowing from the exchange of correspondence/offers/counteroffers and reminds one of the importance for commercial transactions involving sale/purchase of goods that UCC 2-207 is the “bible” for sorting out the battle-of-the-forms as to the applicable terms of the deal!
- And, the Federal District Court in the Pennsylvania Eastern District (04-CV-462) decided in that Prudential Insurance case on July 22, 2005, that the E-Signature Act does not require the use/acceptance of electronic signatures—a very important “lesson” as to whether or not the parties “accept” the use of same.

Recent Publications Include—

- “The New (and Improved) Article 2 to the UCC,” NCMA Contract Management magazine, December 2004, republished in the National Association of Credit Management Business Credit magazine, March 2005—available at www.Rumbaugh.net

Future Speaking Topics Include—

- “Thinking Again For The First Time About Advocacy In Arbitrations,” various Bar meetings.
- ISM Orange County Affiliate, "Big Changes to UCC Rules on Contract Formation and Terms of the Deal are Around the Corner—Are you Ready?"
- Norfolk, Virginia and Central Virginia, NCMA Chapters and NAPM/ISM of New Hampshire, "How 'Baseball Arbitration' will help in Negotiating Sole Source Procurements—or how to get through Impasse."
- Maple Leaf, Toronto, Canada, NCMA Chapter, “What Hockey and Baseball Have in Common—A Discussion on Alternative Dispute Resolution.”
- Halifax, Nova Scotia, Canada, Atlantic Public Purchasing Association Chapter, NIGP, "How 'Baseball Arbitration' will help in Negotiating Sole Source Procurements."
- Houston Space City, Ft. Wayne, and Boston NCMA Chapters, "Preparing for the Big Changes to UCC Rules on Contract Formation and Terms of the Deal."

Items summarized in these 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 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