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

- The Government has initiated several actions to streamline contractual actions in connection with Katrina including the following:
  - The President suspended Davis-Bacon Act statutory provisions in connection with payment determinations required by the Secretary of Labor. See [http://www.acq.osd.mil/dpap/general/docs/proclamation\\_katrina.pdf](http://www.acq.osd.mil/dpap/general/docs/proclamation_katrina.pdf)
  - The Under Secretary of Defense (AT&L) has issued a memo authorizing special emergency actions pursuant to 41 USC 428a which increases the micro-purchase to \$15,000, the simplified acquisition threshold to \$250,000, and the test program for commercial items threshold to \$10 million. See <http://www.acq.osd.mil/dpap/general/docs/Hurricane%20Katrina%20Procurement%20Efforts.pdf>
  - A class deviation from FAR 213.301(3) was issued which authorizes the use of commercial procurement purchase cards—except for construction--for acquisitions not to exceed \$250,000, etc. with oral certifications, etc. permitted See <http://www.acq.osd.mil/dpap/general/docs/Katrina%20Relief%20Efforts%20Memo.pdf>
  - Related GSA information is at <http://www.fedbizopps.gov/katrina.html>
- The next meeting of the Services Acquisition Advisory Panel is scheduled for September 27, 2005, beginning at 9 a.m. at the Federal Deposit Insurance Corporation (FDIC), Basement auditorium, 801 17th Street NW., Washington, DC 20434. The public is asked to pre-register (202) 208-7279.
- The Secretary of Defense issued a memorandum on September 7, 2005, on the subject of “Ethics and Integrity,” calling for “broad application” of recently released “lessons learned” to ensure integrity of acquisition decisions. He stressed “to all members of the Department the importance of placing ethics at the forefront of our vision and values.” The emphasis “must not only be on ‘doing things right,’ but also on ‘doing the right thing.’” Expediency “must never be an excuse for misconduct.”  
COMMENT: What is the culture for your organization?

- On September 1, 2005, DoD announced several regulatory changes including the following:
  - Training for Contractor Personnel Interacting with Detainees (DFARS Case 2005-D007)—interim rule. “Adds policy addressing requirements for contractor personnel who interact with detainees to receive training regarding the applicable international laws and obligations of the United States. Contractor personnel must receive this training prior to interacting with detainees and annually thereafter.”
  - Levy on Payments to Contractors (DFARS Case 2004-D033)—interim rule. “Adds policy addressing the effect of Internal Revenue Service levies on contract payments. Requires contractors to promptly notify the contracting officer if a levy that will jeopardize contract performance is imposed on a contract. When the contractor's inability to perform will adversely affect national security or will result in significant additional costs to the Government, the contracting officer must notify the Director, Defense Procurement and Acquisition Policy, in accordance with agency procedures.”
  - Restrictions on Totally Enclosed Lifeboat Survival Systems (DFARS Case 2004-D034)—final rule.
  - Assignment of Contract Administration - Exception for Defense Energy Support Center (DFARS Case 2004-D007)—final rule.
  
- It’s reported that the Professional Services Council and the Information Technology Association of America have objected to the government’s position “that a prime contractor’s subcontracted labor should be invoiced at the cost that the subcontractor invoices the prime contractor rather than at the rates listed in the prime contractor’s T&M contract.”
 

**COMMENT:** If the government’s position/logic is correct, where does it stop? At what tier can there be any normal mark-up by a higher tier? There is a cost associated with managing a vendor/supplier and there really is no free lunch.
  
- The ABA International Law Section in its Spring 2005 issue of The International Lawyer had an interesting article on “The Legal Transfer of Employment-Related Data to Outside the European Union: Is It Even Still Possible?” Multinational companies must be receptive to the application/enforcement of EU rules in connection with data-privacy associated with the international movement of employees.

**Thought on this “anniversary” of 9-11, recent tragedies including the hurricanes in life—**

Are our contract/subcontract systems/procedures and conflict resolution processes at the level required to address these dynamic days of change—and for the foreseeable future? What can we do—individually in our professional capacity as well within our various public/private organizational structures—to raise the bar?

*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.*