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IN THIS ISSUE

[Domain Expertise](#)

[Federal /State Marketplace](#)

[Matters](#)

[Educational Topics](#)

[Compliance Issues](#)

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Domain Expertise

GSA Making It Easier to engage with government

One of GSA's latest initiatives is the first-ever mobile app for RegInfo.gov, a tool that increases the transparency of the federal regulatory process and makes it possible to have the latest information about upcoming federal forms and regulations at your fingertips.

Available for both Android and iOS devices, this new app is the result of a collaboration between the Regulatory Information Service Center (RISC), part of GSA's Office of Governmentwide Policy and the Office of Management and Budget (OMB). This new app means you no longer need to be at a computer to keep up with the federal rulemaking process or information collection requests. Instead, use the Reginfo app to get the latest info on every important federal rule, whether it is currently in the planning stages, soon-to-be enacted, or still under review by OMB's Office of Information and Regulatory Affairs (OIRA).

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Federal Marketplace Matters

Accelerating virtual reality in government

GSA's Digital Government group has created a community focused on the implementation of virtual and augmented reality technology in government settings.

Many agencies have already started experimenting with the technology. NASA is using it for data visualization and the Department of Veterans Affairs has begun looking into VR's potential for treatment of post-traumatic stress disorder. But starting these programs can be difficult, and 2017 will be about making adoption easier, said Justin Herman, the VR and artificial intelligence communities lead for GSA.

When an agency wants to adopt a new technology, it must create policy development resources, show performance metrics and sometimes conduct a pilot. GSA hopes this community network of industry experts and thought leaders will be a resource for sharing, developing and implementing strategies.

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Proposed Rule on Set-Asides Under Multiple Award Contracts

Recently, the FAR Council published a [proposed rule](#) titled, Set-Asides Under Multiple-Award Contracts, which provides additional guidance on the use of partial set-asides, reserves, and set-asides of orders under multiple-award contracts. It also clarifies requirements related to the limitations on subcontracting and the nonmanufacturer rule.

Proposed changes include:

- Partial Set-Asides. When market research indicates that a total set-aside is not feasible under a multiple-award contract, partial set-asides should be considered. Further, small businesses will no longer be required to submit an offer on the non-set-aside portion of a solicitation in order to be considered for the set-aside portion of the solicitation.
- Orders under Multiple-award contracts. Provides new methodologies for setting aside orders under multiple-award contracts so that contracting officers (COs) have the flexibility to employ the ordering technique that is best suited to the surrounding acquisition environment. For example, COs may establish terms and conditions providing that all task orders are set aside for small businesses awarded under the set-aside portion of the contract.
- Assignment of NAICS codes and size standards. Guidance is provided for the assignment of NAICS codes for multiple-award contracts. Contracting officers will have the ability to 1) assign one NAICS code to an entire solicitation, or 2) if a solicitation can be divided into categories, assign a NAICS code and its corresponding size standard to each portion or category.
- Application of limitations on subcontracting and the nonmanufacturer rule. Moves the nonmanufacturer rule coverage and subcontracting limitations together under FAR Part 19. Clarifies that 1) performance of work requirements do not apply in the case of full and open competition, and 2) compliance with limitations on contracting can be determined based on the minimum percentage of work performed at the aggregate contract or order level.

[Source](#)





Federal Marketplace Matters

Telecom transition is looming

GSA is preparing to award its 15-year, \$50 billion contract for 21st-century telecommunications. The agency is also busy making sure its customer agencies will be able to use it.

GSA has not set a firm award date for the massive Enterprise Infrastructure Solutions contract, which will undergird the agency's next-generation telecom strategy dubbed Network Services 2020. But Mary Davie, assistant commissioner of GSA's Office of Information Technology Category, and other officials have said the target is this spring.

Some deadlines for the extremely complex contract have slipped in the past year, though not substantially, and Davie and her crew in GSA's Office of Network Services Programs have been cagey about specifying an award date.

Judging from public presentations made by some of the bidders, they expect an award sometime in May. Ten companies have lined up for the contract, including traditional telecom companies AT&T, BT, CenturyLink, Frontier Communications and Verizon, and less traditional providers Core Technologies, Hughes, Level 3 Communications, MetTel and Windstream.

What contractors should expect from the Trump administration

Government contractors are in the dark about what President Donald Trump's administration has in store, just like everyone else. But government contract lawyers from the law firm

Crowell and Moring are making some speculations. Robert Burton, partner at Crowell and Moring and former deputy administrator of the Office of Federal Procurement Policy, said the overarching goal of the administration seems to be a more efficient procurement system at much lower prices.

"I think that's going to translate into increased opportunities for federal contractors, as well as some challenges," Burton said in a Jan. 26 webinar.

The administration's top priority, Burton said, seems to be reducing the number of regulatory and compliance burdens contractors function under, especially those imposed by the Obama administration. Burton said he expects the Fair Pay and Safe Workplaces Executive Order, among others, to be rescinded soon.

"We'll just stay tuned to see what happens, but I think you can be sure that there'll be some changes with respects to those executive orders," he said.

Burton is expecting increased competition in the federal marketplace as these regulations are eased, with commercial item procurements emerging as a prime target.

"It's interesting to note between 1996 and 2012, the number of laws and executive orders applicable to commercial item procurement increased from 17 to 50, and the level of oversight has expanded dramatically," he said. "I think that we're going to see a reduction in the growing burden on commercial contracting and I think we're going to see a reduction in contractor compliance costs. This may actually attract more commercial contractors to the federal marketplace."

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Federal Marketplace Matters

Federal IT executives offer Trump transition team broad insights on state of IT

About a week before the end of the Obama administration, the Trump transition team leading the oversight of technology management held its own exit interview of sorts.

Multiple sources confirm that the Trump team met with five agency chief information officers and their deputy secretaries to discuss a range of issues, including the innovation, data center consolidation and the appropriate roles of federal CIOs.

The discussion also centered on the progress so far around IT modernization and cybersecurity as well as the proliferation of councils — privacy, chief information security officer (CISO), CTO, chief data officer (CDO) and others — and whether there were too many.

The meeting is noteworthy for several reasons. First, there has been a lacking of information and plans from the Trump administration regarding government management. So the 60-to-90 minute meeting is another piece to understanding what's important and what could be part of a new management agenda.

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WOSB Certification Errors Lead to Size Protest

Small business owners need to be aware of the simple, proactive measures that are available right now to avoid headaches down the road.

One prime example is properly maintaining your SAM.gov profile. Taking the time to properly check (and periodically re-check) your SAM.gov reps and certs can help to establish and maintain your eligibility in the SBA's socio-economic programs (like the Women-Owned, Service-Disabled, and HUBZone programs).

For example, a [recent SBA size protest](#) considered the case of whether an apparently woman-owned small business was disqualified from receiving a WOSB set-aside contract award based on incorrect information in its SAM profile. The protest allegations included that the profile included inconsistent representations concerning the business's size status and WOSB qualifications.

The SBA did not disagree with the basis of the protest — the SAM profile *was* inconsistent and *did not* accurately reflect the correct size status for the set-aside contract. Nevertheless, the SBA denied the protest (and the subsequent appeal), finding that the awardee met the WOSB requirement of being at least 51% owned and controlled by one or more women (regardless of the conflicting SAM representations).

So, is the lesson here that SAM reps and certs don't matter as long as you meet the SBA's criteria? Definitely not.

First, it should go without saying that [small businesses should not actively open the door to size protests](#). Even if you prevail on the protest (and the potential appeal), you will still have spent valuable time, money, and other resources defending against a preventable action. It is much more advisable to bolster your company's size status from all challenges and at every turn.

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State Marketplace Matters

State Procurement Officers Release Priorities for 2017

The **National Association of State Procurement Officers** released a ranked list of their members' **top ten priorities for 2017**. It's perhaps not surprising, "the strategic role of central procurement" is ranked No. 1—including "creating an enterprise vision for the state" and "an elevated role in the hierarchy of the executive branch."

The list paints a broad-brush picture of procurement officials focused on the growth and maturation of their agencies as a core statewide function, with workforce development, measuring performance, e-procurement / enterprise resource planning solutions, and effective sourcing strategies rounding out the top five.

Also of interest on the latter half of the list, a focus on information technology, including how to deal with "emerging technologies" and cloud-based platforms.

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Educational

Forget the hiring freeze, OMB plan could alter the workforce

While questions remain over the limits of President Donald Trump's recent federal hiring freeze, a larger reshaping of the executive branch is underway.

The Jan. 23 executive order institutes the freeze for 90 days, pending a plan from the directors of the Office of Management and Budget and the Office of Personnel Management "to reduce the size of the federal government's workforce through attrition."

While the hiring freeze has garnered headlines for its loosely-interpreted exemptions of national security and public safety needs, all eyes will be on the OMB plan and what it prioritizes for the federal workforce.

"The impact that this executive order will have in actually doing that is very much up in the air. The more important thing is the Phase 2, which is the creation of the downsizing plan," said Don Kettl, a professor at the University of Maryland's School of Public Policy and a nonresident senior fellow at the Brookings Institution.

"What kind of plan will it be in trying to reduce the size of the federal government through attrition? That really raises two questions: First, does the size of the federal workforce need to be reduced. And the second is, if you are going to reduce it, does it make sense to do it through attrition?"

By using attrition as a tool to whittle down the workforce, the Trump administration would be trying to leverage the increasing number of federal employees eligible for retirement to achieve its goals.

Some estimates have pegged the eligible number of retirees at 40 percent of the total workforce by 2020, which would accomplish the Trump administration's goal, but runs the risk leaving a very large skills gap.

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Upcoming Events

February 22-23 Southwest Acquisition Center's Industry Event for 56, 66 & 73

[See more information](#)

March 7-8, 2017 IFMIPS 51V, Industry Day Event [Register](#)

March 28 -29, 2017 IFMIPS 03FAC Industry Day Event [Register](#)

April 25-26, 2017 the GSA Federal Acquisition Training Symposium Huntsville, Alabama, [Registration Details](#)

June 6, 2017 the Professional Services Industry Day in Tacoma, Washington. [See more information](#)

TGG will be represented at all GSA Industry events above so if you are not able to attend contact your TGG consultant with any questions you may have.

April 13 2017 B2G Conference & Expo Joint Base Langley / Eustice [More Info](#)



Compliance

ASBCA Shoots Down DCAA Overreach on Responsibility to Manage Subcontractors

A prime contractor is responsible for managing its subcontractors, but what exactly does that require? In a recent decision, the answer of the Armed Services Board of Contract Appeals was: not nearly as much as DCAA claimed.

In [Lockheed Martin Integrated Sys., Inc.](#), ASBCA Nos. 59508, 59509, the Board ruled on a Government claim seeking more than \$100 million from LMIS for allegedly breaching an obligation to manage subcontracts. In DCAA's reading, this obligation was extensive and required a number of concrete actions by the prime contractor.

After auditing three LMIS contracts, DCAA questioned \$103 million in subcontract costs. DCAA claimed that, for the costs to be allowable, LMIS had to provide documents showing it had: (1) reviewed subcontractor resumes to confirm personnel qualifications; (2) reviewed subcontractor timesheets to confirm the accuracy of invoiced hours; and (3) tried to obtain incurred cost submissions from its subcontractors, contacting "the Government" for "assistance" if the subcontractors refused. Attached Decision at 10. DCAA claimed it could find no subcontract costs allowable "[w]ithout an incurred cost submission from the subcontractor," which was the prime contractor's responsibility to obtain. Id. at 11.

LMIS maintained that it had flowed down all necessary requirements to its subcontractors, had collected all appropriate (nonproprietary) information from them, and had followed standard protocols to vet subcontractor costs before submitting them for reimbursement. The contracting officer nevertheless adopted DCAA's reasoning in a final decision demanding payment from LMIS for the \$103 million in questioned subcontractor costs.

LMIS appealed to the ASBCA, and the Board then ordered the Government to file the complaint. In response, LMIS moved to dismiss. In a decisive win for contractors, the Board expressly rejected the Government's theory.

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