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Government Contracts Regulatory and Legislative Update: April

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Regulations

CBCA Issues Proposed Rules of Procedure for FEMA Arbitrations

On March 5, 2019, the Civilian Board of Contract Appeals (CBCA) issued [proposed rules](#) of procedure for Federal Emergency Management Agency (FEMA) public assistance grant arbitrations under the Stafford Disaster Relief and Emergency Assistance Act. The rules, promulgated in 48 CFR Part 6106.601-613, address initial conferences, hearings, evidence, and filings, among other things. Comments on the proposed rules are due by May 6, 2019.

OFPP Seeks Comments on Cost Accounting Standards and Generally Accepted Accounting Principles

On March 13, 2019, the Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board invited [public comments](#) on a Staff Discussion Paper (SDP) regarding conformance of the Cost Accounting Standards (CAS) to Generally Accepted Accounting Principles (GAAP). The SDP discusses preliminary benefits and drawbacks of CAS-GAAP conformance, provides a roadmap for future CAS-GAAP analysis, and offers an initial analysis of CAS 408 (Accounting for costs of compensated personal absence) and CAS 409 (Cost accounting standard depreciation of tangible capital assets). Moving forward, the Board's analysis will prioritize standards focusing primarily on cost measurement and assignment of costs to accounting periods. This SDP is the first step in the rulemaking process and the full text of the SDP is [available here](#). Comments on the SDP are due by May 13, 2019.

USAID Issues Proposed Rule to Revise Incentive Awards Program for Personal Services Contractors

On March 18, 2019, the U.S. Agency for International Development (USAID) issued a [proposed rule](#) to amend the Agency for International Development Acquisition Regulation (AIDAR) appendices D and J to allow USAID to provide incentive awards to Personal Services Contractors (PSCs) who demonstrate extraordinary performance of services under their contract. Comments on the proposed rule are due by May 17, 2019.

USAID Issues Proposed Rule to Increase Oversight of Contractor Acquisition and Use of IT Resources

On March 21, 2019, the USAID issued a [proposed rule](#) to amend AIDAR to refine information security- and information technology-related policies and requirements for contractors, in accordance with the Federal Information Technology Acquisition Reform Act. Importantly, USAID proposes to add AIDAR subpart 739 to include a broader definition of information technology, and proposes to revise clause 752.204-72, to be titled *Homeland Security Presidential Directive-12 and Personal Identity Verification*, with new restrictions and reporting requirements.

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USAID also proposes to add the following new clauses to AIDAR subpart 752.239:

- *Limitation on Acquisition of Information Technology*, requiring prior contracting officer approval for all IT acquisition under an award as defined in the clause.
- *Software License*, prohibiting automatic software license renewal. Such renewals require mutual party agreement or Government exercise of an option renewal clause.
- *Information and Communication Technology (ICT) Accessibility*, requiring contractors implement Section 508 of the Rehabilitation Act of 1973, as amended.
- *Use of Information Technology Approval*, allowing contractors to acquire only contract-specified IT.
- *Skills and Certification Requirements for Privacy and Security Staff*, requiring contractor personnel performing certain IT and Information System security responsibilities to possess specified credentials and certifications.

Comments on the proposed rule are due by May 20, 2019.

DoD Issues Updated Federal Prison Industries List of Product Categories

On March 26, 2019, the U.S. Department of Defense (DoD) issued a [notice](#) regarding publication of the updated annual list of product categories for which the Federal Prison Industries' share of the DoD market is greater than five percent, as statutorily required. DoD must procure the listed product categories and the products included in those categories using competitive procedures per Defense Federal Acquisition Regulation Supplement (DFARS) 208.602-70. Contracting officers must consider a timely FPI offer for these categories when conducting the competition, and must include FPI even if the procurement would have been a Federal Acquisition Regulation (FAR) Part 19 set-aside. The new [FPI list](#) is effective March 28, 2019.

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