



# Legislative Update

MSFC SBELT 29 January 2020



## False Claims Act (FCA) Cases in FY 2019

- Justice Department recovers over \$3B (\$2.6 health care related.)
- In 1986, Congress strengthened the Act by increasing incentives for whistleblowers. The whistleblower, or *qui tam*, actions comprise a significant percentage filed cases. If the government prevails in a *qui tam* action, the whistleblower typically receives a portion of the recovery (15 – 30%).
- Whistleblowers filed 633 *qui tam* suits in fiscal year 2019, and this past year the department recovered over \$2.1 billion in these and earlier filed suits.
- Informatica LLC paid \$21.57 million. Informatica allegedly provided false information concerning its commercial discounting practices for its products and services to resellers, who then used that false information in negotiations with GSA for government-wide contracts. The false disclosures caused GSA to agree to less favorable pricing, and, ultimately, government purchasers to be overcharged.

<https://www.justice.gov/opa/pr/justice-department-recovers-over-3-billion-false-claims-act-cases-fiscal-year-2019>

# Expiration of FAR 51 Deviation Authority

- Contracting Officers were authorized to grant GSA contractors access to the Federal Supply Schedule (FSS) and GSA Global Supply Programs when deemed appropriate.
- The FAR 51 Deviation expired on Oct 23, 2019. Deviation shall not be used on orders placed after this date.
- Agencies may now use Order Level Material (OLM) procedures to acquire ODCs and material support items.
- GSA Refresh 1 modification removes the clause.

# CMMC

## Cybersecurity Maturity Model Certification

- Current Regulations: DFAR 252.204-7012 & NIST 800-171
- CMMC Framework Version 1 – January 2020
- October 2020 - All solicitations/contracts will establish a required CMMC level (1 to 5)
- Third party certification. Higher levels may be conducted by DCMA or Defense Counterintelligence and Security Agency

National Defense Jan 2020 article “Small Businesses Concerned About New Cybersecurity Certification”



<https://www.cmmcab.org/>

# Open FAR Case as of 1/17/2020

| Case Number | Part Number | Title  | Synopsis  | Status   |
|-------------|-------------|--|---|--|
| 2019-014    |             | (EO) Strengthening America's Cybersecurity Workforce | Implements Executive Order 13870 of May 2, 2019, America's Cybersecurity Workforce, which directs agencies to incorporate the NICE Framework lexicon, taxonomy and reporting requirements into contracts for information technology and cybersecurity services. | 11/13/2019 DARC Director tasked staff Team to re-draft proposed FAR rule. Report due 11/27/2019. Report due date extended to 01/22/2020. |

## NICE Cybersecurity Workforce Framework

The National Initiative for Cybersecurity Education (NICE) Cybersecurity Workforce Framework (NICE Framework), published by the National Institute of Standards and Technology (NIST) in [NIST Special Publication 800-181](#), is a nationally focused resource that establishes a taxonomy and common lexicon to describe cybersecurity work, and workers, regardless of where, or for whom, the work is performed.

# Open FAR Case as of 1/17/2020

| Case Number | Part Number      | Title  | Synopsis   | Status   |
|-------------|------------------|--|--|--|
| 2019-009    | 1, 13, 39, 4, 52 | (S) Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment | Implements paragraph (a)(1)(B) of section 889 of the NDAA for FY 2019 which prohibits procurement from entities using covered equipment and services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Technology Company or Dahua Technology Company, to include any subsidiaries or affiliates. | 01/15/2020 DARC agreed to draft proposed FAR rule. DAR staff processing. |

# Open FAR Case as of 1/17/2020

| Case Number | Part Number | Title  | Synopsis  | Status  |
|-------------|-------------|--|---|---|
| 2020-001    | 22.12, 52   | (EO) Revocation of Executive Order on Nondisplacement of Qualified Workers | Implements E.O. 13897, Improving Federal Contractor Operations by Revoking Executive Order 13495, dated 31 October 2019. E.O 13495, Nondisplacement of Qualified Workers Under Service Contracts, required that successor Federal contractors in certain circumstances offer a right of first refusal of employment to employees employed under the predecessor contract. | 01/07/2020 Draft final FAR rule from FAR analyst to OFPP. OFPP reviewing. |
| 2019-013    |             | Inflation Adjustment of Acquisition-Related Thresholds                     | Adjusts statutory acquisition-related thresholds for inflation to implement 41 U.S.C. 1908; and other acquisition-related thresholds as a matter of policy, planned to be effective October 1, 2020.  | 01/08/2020 DARC agreed to draft proposed FAR rule. DAR staff processing.  |

# Open FAR Case as of 1/17/2020

| Case Number | Part Number | Title  | Synopsis  | Status   |
|-------------|-------------|--|---|--|
| 2019-008    | 19, 52      | Small Business Program Amendments                          | Implements regulatory changes proposed by the Small Business Administration (83 FR 62516) regarding small business programs. The proposed regulatory changes include the timing of the determination of size status for multiple-award contracts for which price is not evaluated at the contract level; the grounds for size status protests; and the grounds for socioeconomic status protests. | 12/18/2019 DARC Director tasked Acquisition Small Business Team to draft proposed FAR rule. Report due 01/29/2020.           |
| 2019-007    | 19, 2, 52   | Update of Historically Underutilized Business Zone Program | Implements regulatory changes proposed by the Small Business Administration (83 FR 54812) regarding the Historically Underutilized Business Zone (HUBZone) Program. The proposed regulatory changes are intended to reduce the regulatory burden associated with the HUBZone Program.   | 12/18/2019 DARC received Acquisition Small Business (FAR)Team draft proposed FAR rule from DAR staff. Discuss on 01/15/2020. |



# Open FAR Case as of 1/17/2020

| Case Number | Part Number     | Title   | Synopsis  | Status   |
|-------------|-----------------|---|---|--|
| 2019-004    | 19.7, 42.15, 52 | (S) Good Faith in Small Business Subcontracting | Implements section 1821 of the NDAA for FY 2017 (Pub. L. 114-328) and SBA implementing regulations. Section 1821 requires SBA to provide examples of activities that would be considered a failure to make a good faith effort to comply with a small business subcontracting plan. | 01/07/2020 Draft proposed FAR rule from FAR analyst to OFPP. OFPP reviewing. |
| 2018-018    |                 | (S) Revision of Definition of "Commercial Item" | Partially implements section 836 of the NDAA for FY 2019 (Pub. L. 115-232). Section 836 separates the "commercial item" definition into definitions of "commercial product" and "commercial service." Section 836 set the effective date of the new definitions to January 1, 2020. | 11/22/2019 Proposed FAR rule to FARSEC for preparation of FR notice.         |

# Open FAR Case as of 1/17/2020

10

| Case Number | Part Number   | Title  | Synopsis   | Status   |
|-------------|---------------|--|--|--|
| 2018-016    |               | (S) Lowest Price Technically Acceptable Source Selection Process | Implements section 880 of the NDAA for FY 2019 (Pub. L. 115-232). Section 880 provides limitations and additional guidance on the situations in which lowest-priced, technically acceptable source selection criteria should be used in procurement.   | 12/18/2019 DARC Director tasked Acquisition Strategy Team to review public comments, draft final FAR rule. Report due 02/12/2020.  |
| 2018-014    | 8, 13, 15, 38 | (S) Increasing Task-order Level Competition                      | Implements section 876 of the NDAA for FY 2019 (Pub. L. 115-232). Section 876 amends 41 U.S.C. 3306(c) by providing an exception to the requirement to consider price as an evaluation factor for the award of certain indefinite-delivery, indefinite-quantity contracts and Federal Supply Schedule contracts. | 08/22/2018 DARC Director tasked Acquisition Strategy Team to draft proposed FAR rule. Report due 10/17/2018. 11/30/2018, Case transferred to FAR Acquisition Environmental and Contract Management Team. Report due date extended to 07/31/2019. Report due date extended to 02/19/2020. |

# Open FAR Case as of 1/17/2020

| Case Number | Part Number                                  | Title   | Synopsis   | Status   |
|-------------|--|---|--|--|
| 2018-005    | 14.201-7, 15.4, 30.2, 52.214, 52.215, 52.230 | (S) Modifications to Cost or Pricing Data Requirements  | Implements section 811 of the NDAA for FY 2018. Section 811 amends 10 U.S.C. 2306a and 41 U.S.C. 3502 to increase to \$2 million the TINA threshold for requiring certified cost or pricing data.  | 01/13/2020 FAR staff notified DAR staff of CAAC differences from team report or DARC suggested changes. DAR and FAR staff resolving open issues. |
| 2018-003    | 19, 42, 52                                   | (S) Credit for Lower-Tier Small Business Subcontracting | Implements section 1614 of the NDAA for FY 2014, as implemented in the SBA regulations on 12/23/2016 (81 FR 94246), which allows prime contractors to receive credit toward goals in their small business subcontracting plans for subcontracts awarded by their subcontractors. | 01/08/2020 Case on hold at the direction of DARS Director.   |

# MAS Consolidation



## Phase One

### Develop the New Schedule

- ✓ Create a new solicitation for the single schedule
- ✓ Review every term and condition
- ✓ Map duplicate Special Item Numbers (SIN) across the current solicitations
- ✓ Use Category Management to better organize offerings
- ✓ Release new schedule and close existing schedules to new offers

## Phase Two

### Mass Modifications

- Complete mass modification for all existing contract holders (simply to update terms and conditions)
- Contracts retain current schedule contract number
- Vendors may select SINs that were previously on separate schedules

## Phase Three

### Multiple Contract Consolidation

- Consolidate multiple contracts into a single contract for those contractors

To learn more, visit <http://www.gsa.gov/mastransformation>

# GSA MAS Mass Modification

- Mass Mod planned to be issued to PSS contractors during the first week of February
- Mass Mod open until 7/31/2020
- Before accepting the mass modification, be sure you are prepared to accept it:
  - Ensure your contract is up to date - all prior mass mods have been accepted
  - Review the [MAS Solicitation](#) to see the clauses that will be incorporated
  - Identify if there are any currently awarded clause exceptions.