GOVERNMENT CONTRACTS REVIEW

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Current Issues Affecting Government Contractors ■

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By Alston & Bird's Government Contracts Group

The GovCon Files

Proposed Mandatory Reporting Rule for Supply Contracts Is a Major Expansion

In light of recent reports documenting a significant increase in counterfeit parts across the supply chain, the Department of Defense and the Federal Acquisition Regulatory Council have recently issued a number of rules ostensibly seeking to mitigate the growing threat counterfeit items pose. In actuality, however, the proposed rules expand obligations for defense and other government contracting manufacturers and suppliers well beyond mere counterfeit issues. While the Department of Defense final rule only applies to Department of Defense contracts and solely concerns counterfeit issues with electronic parts, the Federal Acquisition Regulatory Council's proposed rule would cover all federal supply contracts and concerns both counterfeit and nonconformance issues related to any type of end item.

On May 6, 2014, the Department of Defense published its first final rule amending the Defense Federal Acquisition Regulation Supplement in partial implementation of Section 818 of the National Defense Authorization Act for Fiscal Year 2012. Several weeks later, on June 10, 2014, the Federal Acquisition Regulatory Council issued a proposed rule seeking to amend the Federal Acquisition Regulation in partial implementation of Section 818 of the National Defense Authorization Act for Fiscal Year 2012. While these two rules are linked in some respects, the Federal Acquisition Regulatory Council's proposed rule is much broader in scope and application than the Department of Defense's final rule. In short, the proposed rule seeks to reduce the risk of counterfeit and nonconforming items by building on the existing contractor inspection system requirements and adding a requirement for contractors to report to the Government-Industry Data Exchange Program (GIDEP) database a "counterfeit item," a "suspect counterfeit item," or an item that contains a "major nonconformance" or "critical nonconformance" that is a common item and constitutes a quality escape that has resulted in the release of like nonconforming items to more than one customer. The rule also requires contractors and subcontractors to screen reports in the GIDEP database to avoid the use and delivery of reported items.

Applicability and Definitions

The proposed rule broadly applies to any Federal Acquisition Regulation-covered agency and all contractors and subcontractors at any tier providing supplies to the government, including commercial item and small business vendors. The proposed rule provides definitions for the following five key terms:

- Common item: an item that has multiple applications versus a single or peculiar application. Common items include, for example, raw or processed materials, parts, components, subassemblies and finished assemblies that are commonly available products (such as nondevelopmental items, off-the-shelf items, National Stock Number items or commercial catalog items).
- Counterfeit item: an unlawful or unauthorized reproduction, substitution or alteration that has been knowingly mismarked, misidentified or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer or a source with the express written authority of the original manufacturer or design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used items represented as new or the false identification of grade, serial number, lot number, date code or performance characteristics.
- Design activity: an organization, government or contractor that has responsibility for the design and configuration of an item, including the preparation or maintenance of design documents. Design activity could be the original organization or an organization to which design responsibility has been transferred.
- Quality escape: a situation in which a supplier's internal quality control system fails to identify and contain a nonconforming condition.
- Suspect counterfeit item: an item for which credible evidence (including but not limited to visual inspection or testing) provides reasonable doubt that the item is authentic.

The proposed rule does not suggest any changes to the definitions of "critical nonconformance" or "major nonconformance" currently provided under FAR Section 46.101.

Summary of Key Obligations and Requirements

Under the proposed rule, a contractor would be subject to two broad reporting requirements. First, contractors would have to provide a written report to GIDEP within 60 days of becoming aware that a common item purchased by or for the contractor for delivery to or for the government is counterfeit, is suspected to be counterfeit or contains a major or critical nonconformance and constitutes a quality escape that has resulted in the release of like nonconforming items to more than one customer. Second, contractors would have to provide a written report to the contracting officer within 30 days of becoming aware of any end item, component, subassembly, part or material contained in supplies purchased by the contractor for delivery to or for the government is counterfeit or is suspected to be counterfeit.

In addition to these two reporting requirements, contractors would be required to screen reports in the GIDEP database to avoid the use and delivery of items that are counterfeit, suspected to be counterfeit or contain a major or critical nonconformance. Contractors would also be required to retain all counterfeit or suspect counterfeit items until the contracting officer provides disposition instructions.

Public Comment

The public comment period for the proposed rule ended on September 10, 2014. Given the breadth and significant impact of the proposed rule, the Federal Acquisition Regulatory Council will likely spend some time reviewing the comments and considering revisions to the proposed rule. Of particular concern is that the proposed rule, unlike the Department of Defense final rule, does not protect contractors and subcontractors

from civil liability that may arise from good-faith compliance with the mandatory reporting requirements. Further, the proposed rule fails to address how manufacturers/vendors/suppliers can challenge an incorrect report and what minimal steps contractors and subcontractors must take in order to properly incorporate the GIDEP screen into their procurement process.

However the Federal Acquisition Regulatory Council ultimately addresses these issues, the newly expanded reporting and screening requirements will have a significant impact on the government contracting community as a whole. Moreover, how the Federal Acquisition Regulatory Council ultimately implements this rule will be a good indicator of what the Department of Defense will likely do in terms of interpreting and expanding its rules concerning counterfeit and nonconforming parts. And if you think lawyers will be monitoring GIDEP for opportunities to file product liability lawsuits or False Claims Act fraud claims, you are probably correct.

Federal Contractor Update

Final Minimum Wage Regulations, Proposed Regulation Regarding Pay Transparency and New Scheduling Letter; VETS Revises Reporting Form

Federal contractors and subcontractors should take note of several recent developments impacting their legal obligations.

Final Regulations Implementing New Federal Contractor Minimum Wage

Pursuant to an Executive Order from President Obama, the U.S. Department of Labor (DOL) issued a final rule and regulations increasing the minimum wage for employees working on new federal contracts to $10.10 per hour beginning January 1, 2015, with annual increases to follow. The final rule is largely an adoption of the proposed rule that was issued for comment in early June and the subject of a prior advisory.

Covered Contracts. The new regulations apply broadly to four major categories of federal government contracts and any subcontract of any tier under such contracts: (1) procurement contracts for construction covered by the Davis-Bacon Act (DBA); (2) service contracts covered by the Service Contract Act (SCA); (3) concessions contracts, including those excluded under the SCA; and (4) contracts to offer services on federal property or lands. The wage increase applies to new federal contracts, including replacement contracts, in any of the preceding categories that result from a solicitation issued on or after January 1, 2015, and new contracts awarded outside of the solicitation process on or after January 1, 2015. The wage increase does not apply to contracts unilaterally renewed by the federal government, but does apply to contracts renewed, extended or modified through bilateral negotiations on or after January 1, 2015.

Covered Workers. The new regulations apply to any person engaged in performing work on or in connection with a covered contract and whose wages under such contract are governed by the Fair Labor Standards Act (FLSA), the SCA or the DBA, other than individuals employed in a bona fide executive, administrative or professional capacity or under a special certificate pursuant to the FLSA. Similar to administrative practices under the SCA and DBA, the final rule excludes covered workers performing work "in connection with" (as opposed to "work on") covered contracts for less than 20 percent of their hours worked in a given workweek. The DOL views a worker performing "in connection with" a covered contract as any worker who is performing work activities that are necessary to the performance of a covered contract but who is not directly engaged in performing the specific services called for by the contract itself; whereas workers performing "on" a covered contract are "those workers directly performing the specific services called for by the contract." In situations where workers are not exclusively engaged in covered contract work, the federal contractor must keep accurate records segregating the periods in which a worker performed work on or in connection with a covered contract from periods in which noncovered work was performed. Arbitrary assignments of time on the basis of a formula will not be sufficient.

Recordkeeping Requirements. Covered contractors must make and maintain, for a period of three years, the following records for each covered worker:

- name, address and social security number;
- the worker's occupation or classification;
- the rate of wages paid;
- the number of daily and weekly hours worked by the worker;
- any deductions made; and
- the total wages paid.

Notice Posting. Contractors must notify all covered workers of the applicable minimum wage rate. For contracts also covered by the SCA or DBA, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. For workers governed by the FLSA, the contractor must post a notice provided by the DOL in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically, provided such electronic posting is displayed prominently on a website that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

Enforcement. Any worker, contractor, labor organization or other person or entity that believes a violation of the regulations has occurred may file a complaint with the DOL's Wage and Hour Division. The DOL may investigate possible violations either as the result of a complaint or on its own initiative. The regulations provide for remedies such as back payment of wages and debarment.

Notice of Proposed Rulemaking Concerning Pay Transparency

Government contractors will likely need to revise employee handbooks and provide a primer to managers on avoiding actions that could be characterized as discrimination for disclosure of compensation information. On September 17, 2014, the Office of Federal Contract Compliance Programs (OFCCP) released a notice of proposed rulemaking (NPRM) regarding President Obama's Executive Order aimed at promoting greater pay transparency for employees of federal contractors. As part of the President's overall policy goal of reducing gender pay inequality, the proposed rule prohibits federal contractors and subcontractors from discharging or otherwise discriminating against their employees and job applicants for discussing, disclosing or inquiring about compensation information. The policy aims to allow employees to learn and share salary and compensation data of coworkers and in turn raise and attempt to address any perceived inequities with their employers.

Among the proposed new requirements, contractors will be required to agree to a new provision in the mandatory equal opportunity clauses barring pay disclosure discrimination, to include nondiscrimination statements in employee handbooks, and to post and disseminate nondiscrimination information to employees and applicants. Prime contractors will also be required to include in subcontracts flow-down provisions that include the nondiscrimination clause. The proposed rule also requires that the prime contractor "take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance." Although the enforcement mechanism under the new rules remains unclear, the proposed language hints that the means for enforcement, at least to some extent, may be left up to the federal agency administering the contract in question.

The NPRM does contain an important exception that allows an employer to take adverse action against an employee who improperly discloses compensation information that the employee obtains as part of his or her essential job functions. This means that human resource professionals or other managerial employees who access compensation information as part of their essential functions can still be bound to nondisclosure agreements or otherwise reprimanded for the improper disclosure of payment information. While the NPRM proposes rules for determining when an employee's job functions would place him or her within this exception, it also expressly invites comments on this important issue.

The scope of this proposed rule will likely be far reaching, as it applies to contracts over $10,000 and requires incorporation of the nondiscrimination statement into the equal opportunity clause of a grant, contract, loan, insurance or guarantee involving federally assisted construction that is not exempt.

Although several aspects of the NPRM are still unclear, including how these additional requirements will be enforced, government contractors should begin to consider adjustments to long-standing practices of treating employee compensation as confidential and revisions to employee handbooks and equal employment statements. That said, contractors should not make any changes yet, as the proposed rule is open for comment until December 16, 2014, and it is possible that OFCCP's final regulations will be different than those proposed by the NPRM. Once issued, the final regulations will apply to new contracts signed after a date that presumably will be specified in the final rule.

Revised OFCCP Scheduling Letter

On October 1, 2014, OFCCP released its new Scheduling Letter and Itemized Listing that it uses when initiating a compliance review. The new documents significantly expand several portions of OFCCP's audit submission requirements:

- Most importantly, contractors are now required to submit individualized compensation data, rather than the aggregated data required by the old scheduling letter. The compensation data must include the individual's job title, job group and EEO-1 category.
- Contractors are now required to disclose compensation policies and supporting documentation that demonstrates the factors used to determine compensation.
- Compensation is more broadly defined, including not just base salary or wage, but also hours worked, incentive pay, merit increases and overtime.
- Employment information must be reported by individual race and ethnicity rather than by "minority" and "non-minority" classifications previously used. Significantly, the revised race and ethnicity listings do not comport with the seven racial categories used in the annual EEO-1 report that most contractors use to collect and report race and ethnicity information, which presents some ambiguity as to whether OFCCP will continue to accept information in that format.
- OFCCP now requires contractors to define promotions and explain the basis of the promotion data. OFCCP has historically considered promotions to be a personnel move from one job group to another job group, whereas many contractors consider some personnel moves within a job group to also be classified as a promotion. This new requirement aims to bring these sometimes conflicting interpretations into agreement.

OFCCP has said that it plans to issue an FAQ regarding the new letter at some point in the near future.

Updated VEVRAA Reporting Requirements

On February 24, 2014, the Department of Labor's Veterans' Employment and Training Service (VETS) issued a notice of proposed rulemaking to revise the regulations implementing the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA). Under VEVRAA, government contractors are required to annually report the number of employees and new hires who fall into one of several different protected veteran groups. On September 25, 2014, a final rule was published in the *Federal Register* that eases the reporting burden on federal contractors and subcontractors, standardizes terminology with the existing EEO-1 Report and renames the required annual report.

Principally, the final rule standardizes definitions of terms used in the regulations and renames the annual report the Federal Contractor Veterans' Employment Report VETS-4212. Most importantly, the report required by the final rule will require contractors to report specified information on protected veterans in their workforce in the aggregate, rather than for each category of veterans protected under the statute. The preamble to the rule states that "[b]y making available data on the total number of protected veterans employed and newly hired by Federal contractors it will now be possible to include cross-year comparisons of Federal contractors' employment and hiring of protected veterans in the annual report, as well as the proportion of contractors' workforce and new hires made up by the protected veterans." Contractors and subcontractors will have to comply with the reporting requirements in the final rule beginning with the annual report to be filed in 2015.

Protest Decisions

The Difference Between a Weakness and a Deficiency in Proposals

A recent protest decision reinforces the principle that prospective offerors should ensure that proposals are up to date and notify the awarding agency as soon as any changes are discovered.

In *Paradigm Technologies, Inc.*, B-409221.2; B409221.3, the Missile Defense Agency (MDA) of the Department of Defense issued a request for task order proposals for strategic planning and financial support services. The contract award was for a cost-plus-fixed-fee task order and was to be awarded on a best-value basis, "considering technical, past performance, small business utilization past performance, cost, and small business utilization" factors. A key subfactor for the award required prospective offerors to identify key personnel, including a contract program manager and a task order lead. The offerors were instructed to submit résumés for these two key personnel and for any subject matter experts proposed.

MDA received proposals from two offerors, Paradigm (the incumbent) and Booz Allen. After several rounds of discussions with the offerors, MDA requested final proposal revisions. Booz Allen submitted its final proposal revision on July 22, 2013, with résumés for the contract program manager and the task order lead. On August 5, 2013, Booz Allen's proposed contract manager notified Booz Allen that she had accepted a position with another firm, but Booz Allen apparently failed to communicate this information to MDA at that time. On October 23, MDA selected Booz Allen for issuance of the task order, and on October 28, Booz Allen notified the contracting officer that the proposed contract manager had previously left the company and proposed a new individual as the contracts program manager.

Paradigm filed a protest with the Government Accountability Office (GAO), and MDA indicated that it intended to reevaluate the proposals, at which time GAO dismissed the initial protest as academic. After re-evaluating the proposals, the "selection authority recognized that Paradigm's proposal was rated higher than Booz Allen's under the technical and past performance factors and that the technical factor was significantly more important than any other factor"; however, the selection authority concluded that the difference between the two offerors "was not as significant" as the ratings implied and that the change in key personnel was downgraded to a weakness of the Booz Allen proposal. Ultimately, the selection authority again awarded the task order to Booz Allen, and Paradigm again protested.

In sustaining Paradigm's protest, the GAO found that Booz Allen's failure to identify key personnel was a material deficiency that reflected a failure of the proposal to meet a material requirement. The GAO stated that MDA could not simply accept the revised proposal (including the replacement key contact) and consider such a revision a weakness, but rather should have either rejected the proposal entirely or reopened discussions to permit the firm to correct the deficiency. The GAO observed that "[a] weakness generally reflects a proposal flaw that increases the risk of unsuccessful performance, while a deficiency reflects the failure of a proposal to meet a material requirement." The GAO recommended that MDA either reject the proposal as unacceptable or reopen discussions and obtain revised proposals from both offerors.

This decision bears importance for all contractors, as it is important to ensure that proposals are current and reflect up-to-date information. This scenario raises the question: If Booz Allen had communicated the change in key personnel prior to the initial award and asked permission to re-open discussions for resubmission of final offers, would it have been able to successfully defend the award? Although the GAO opinion is silent on this question, the decision turns on whether MDA could technically accept Booz Allen's proposal when it failed to satisfy a material requirement. The fact remains that an offeror's timely disclosure to the contracting agency of material changes to an offer can help avoid costly mistakes (once an award is made) or potential protests once such material changes come to light.

Changes to the Marketplace

FCC Tightens the Administrative Oversight on E-Rate Service Providers While a Recent Federal Court of Appeals Decision Loosens the Grip of the False Claims Act

In its continued efforts to "modernize" the federal E-rate program, the Federal Communications Commission (FCC) recently adopted a Report and Order and Further Notice of Proposed Rulemaking (the "Modernization Order"), which made certain changes to the E-rate program, including the "lowest corresponding price" requirement and price transparency. See *In the Matter of Modernizing the E-Rate Program for Sch. & Libraries,* 29 FCC Rcd 8870 (2014); see also Modernization of the Schools and Libraries "E-Rate" Program, 79 Fed. Reg. 49160-01 (August 19, 2014).

As previously reported, the Schools and Libraries Program component of E-rate is a federal program that provides eligible K-12 public schools and public libraries discounts of 10 percent to 90 percent, depending on need, on approved telecommunications services, broadband Internet access and internal network connections. A key component of the E-rate program is the rule that providers of eligible services cannot charge the schools and libraries a price above the "lowest corresponding price" (LCP). The LCP is "the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services." 47 C.F.R. § 54.500(f).

Both the FCC and Universal Service Administrative Company (USAC), the private entity that administers the E-rate program, have taken recent steps to ensure that E-rate service providers are complying with the LCP requirement. This past spring, USAC issued payment quality assurance (PQA) assessments to E-rate service providers, which for the first time forced service providers to certify compliance with the LCP requirement. Among other perils, this untethered certification requirement put service providers on alert for a wave of fraud investigations and claims under the False Claims Act (FCA). On the heels of the PQAs, the FCC, through the Modernization Order, sought to reinforce the LCP requirement, further step up enforcement of the LCP rule and increase price transparency generally.

Until recently, this was the LCP requirement:

> Providers of eligible services shall not charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory.
> 47 C.F.R. § 54.511(b) (2010).

In other words, as the FCC points out in the Modernization Order, the LCP rule prohibits an E-rate service provider from charging E-rate applicants a price higher than the lowest price the provider charges to similarly situated, non-residential customers.

The FCC's Modernization Order, however, amends this regulation to further tighten the reins on service providers. Recognizing that 47 C.F.R. § 54.511(b) makes no mention of an obligation to offer applicants the LCP, and to ensure that applicants receive the best possible bids from service providers, the FCC amended the regulation, effective September 18, 2014, to add that service providers cannot "submit bids for" a price above the LCP for E-rate services. See 47 C.F.R. § 54.511(b) (2014). In other words, the regulation now expressly states that service providers must offer and charge applicants the lowest corresponding price.

The FCC also stated in the Modernization Order that stepped-up enforcement of the LCP requirement is needed. It therefore directed the Enforcement Bureau to devote additional resources to investigating LCP compliance and bring enforcement actions against service providers that violate the LCP rule. Additionally, in an even further effort to ensure that schools and libraries are purchasing cost-effective services, the FCC ordered that information regarding the specific services and equipment purchased by schools and libraries, as well as their line item costs, be made publicly available on USAC's website. Although some current contracts may be exempt from this rule, all contracts executed after September 18, 2014, are subject to this transparency requirement.

While the Modernization Order does not impose drastically new requirements on E-rate service providers, the adoption of this order, especially on the heels of USAC's PQAs, increases the pressure from the FCC and serves as a strong warning to service providers to ensure that they are both offering and charging E-rate applicants the LCP. This is particularly concerning for service providers, however, as there is little regulatory guidance available on the scope and meaning of the rule.

As the FCC and USAC ramp up LCP enforcement via administrative oversight, a recent Fifth Circuit Court of Appeals decision has mitigated the potentially draconian impact of the combination of the LCP rules with the False Claims Act. Although service providers that fail to comply with the LCP rule may still be subject to contractual liability, commitment adjustments (COMADs), and administrative protest procedures, the Fifth Circuit has concluded that service providers are not subject to liability under the FCA for E-rate related work.

In *U.S. ex rel. Shupe v. Cisco Systems, Inc., et al.,* Case No. 13-40807 (S.D. Tex. July 7, 2014)—a qui tam case under the FCA—the Fifth Circuit concluded that the E-rate program does not trigger FCA liability because it does not involve federal funds and USAC's relationship to the government is too tenuous.

With regard to the question of whether E-rate funds were "provided" by the government, the Fifth Circuit explained that the FCA applies when the government "provides any portion" of the money requested or demanded. In the case of the E-rate program, the court concluded that because the money in the Universal Service Fund, from which E-rate funds are derived, is untraceable to the U.S. Treasury, "the government does not have a financial stake in its fraudulent losses," and thus no FCA liability can attach.

Further, the Fifth Circuit held that government oversight of USAC was not enough to make false or fraudulent claims submitted to USAC fall within the scope of the FCA. Notwithstanding that the FCC maintains regulatory supervision over USAC and the E-rate program, USAC is a private corporation, not the government nor an agent of the government.

Ultimately, the Fifth Circuit concluded that because there are no federal funds involved in the E-rate program, and because USAC is not the government or an agent of the government, alleged fraud in the E-rate program cannot be policed under the anti-fraud provisions of the FCA. The court therefore reversed the district court's decision on this, which resulted in a dismissal with prejudice of the case in the district court.

Despite the FCC and USAC's recent attempts to up the ante on LCP compliance, the Fifth Circuit's decision has all but eliminated the False Claims Act as a tool that the FCC, Inspector General and Department of Justice may use to ensure E-rate programmatic compliance. Because the FCA allows for significant civil penalties in the form of three times actual damages and penalties up to $11,000 per false claim, this decision comes as a significant relief to service providers trying to navigate the still murky waters of E-rate. Service providers should not view the Fifth Circuit's decision as a free pass, of course, as PQA, "red light" or "Code 9" audits could lead to substantial clawbacks and COMADs, and even programmatic debarments. With both USAC's and the FCC's increased focus on the LCP requirement, service providers should expect heightened scrutiny of their E-rate pricing even in the absence of the FCA.

Government Contractor Litigation

Medical Device Manufacturer's Failure to Comply with Country of Origin Requirements Leads to $11 Million Settlement

Medical device manufacturer Smith & Nephew will pay over $11 million to settle one of the first False Claims Act (FCA) whistleblower cases involving medical devices, asserting false certification of the "country of origin" provision of the Trade Agreements Act (TAA) (19 U.S.C. §§ 2501, et. seq.).

The case, *United States ex rel. Cox v. Smith & Nephew, Inc.*, No. 2:08-cv-02832 (W.D. Tenn., order of dismissal, Sept. 4, 2014), highlights the liability companies involved in manufacturing and construction can face if they do not take active steps to monitor the component and parts supply chain in otherwise commercial products the government may buy. With the ever-increasing pressures to move manufacturing and assembly to the lowest-cost locations, extra vigilance is required if the government buys these products.

The TAA requires manufacturers and resellers of product to the government to comply with its provisions in contracts over $204,000. Products must have been "substantially transformed" either in the United States or in a country that has signed a trade agreement with the United States ("designated countries"). The FCA contains a qui tam provision allowing private citizens, known as "relators," to sue companies in violation of this or other provisions of the TAA on behalf of the government and recover a portion of any settlement or judgment as a reward.

In September 2008, Smith & Nephew voluntarily disclosed to the Department of Veterans Affairs and the Department of Defense that it sold medical devices to the government that did not comply with the country of origin requirements. Three months later, in December 2008, Samuel Cox, Smith & Nephew's former information technology manager, filed a qui tam case in federal court, alleging that Smith & Nephew knowingly violated the TAA by selling products that were manufactured in Malaysia, a non-designated country, to the government. Despite Smith & Nephew's prior disclosures, the court allowed Cox's case to go forward. Cox will receive $2.3 million in the settlement, and Smith & Nephew will also have to pay Cox's attorneys $5 million in fees.

The high settlement amount, as well as the continuation of the case despite the voluntary disclosure, should encourage resellers and manufacturers to redouble their compliance efforts to focus on the country of origin of their products and components. Manufacturers should develop and implement programs that focus on the bill of materials listing each component and subcomponent to ensure that end products within the scope of the TAA produced in non-designated countries are kept separate from products supplied to the government.

Pros in the Press

Steven Campbell and Jeff Belkin published "Proposed Mandatory Reporting Rule for Supply Contracts Is a Major Expansion" in ***Industry Today***, dated September 30, 2014.

On October 8, 2014, Jeff Belkin took part in a panel presenting a seminar on bid protests and procurement in connection with an all-day program titled "Government Law" given by The Seminar Group at the Cobb Galleria Centre in Atlanta.

Jeff Belkin is a regular blogger on government contracts and small business in ***The Huffington Post***. Go to www.huffingtonpost.com/jeff-belkin/ to review his blogs.

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