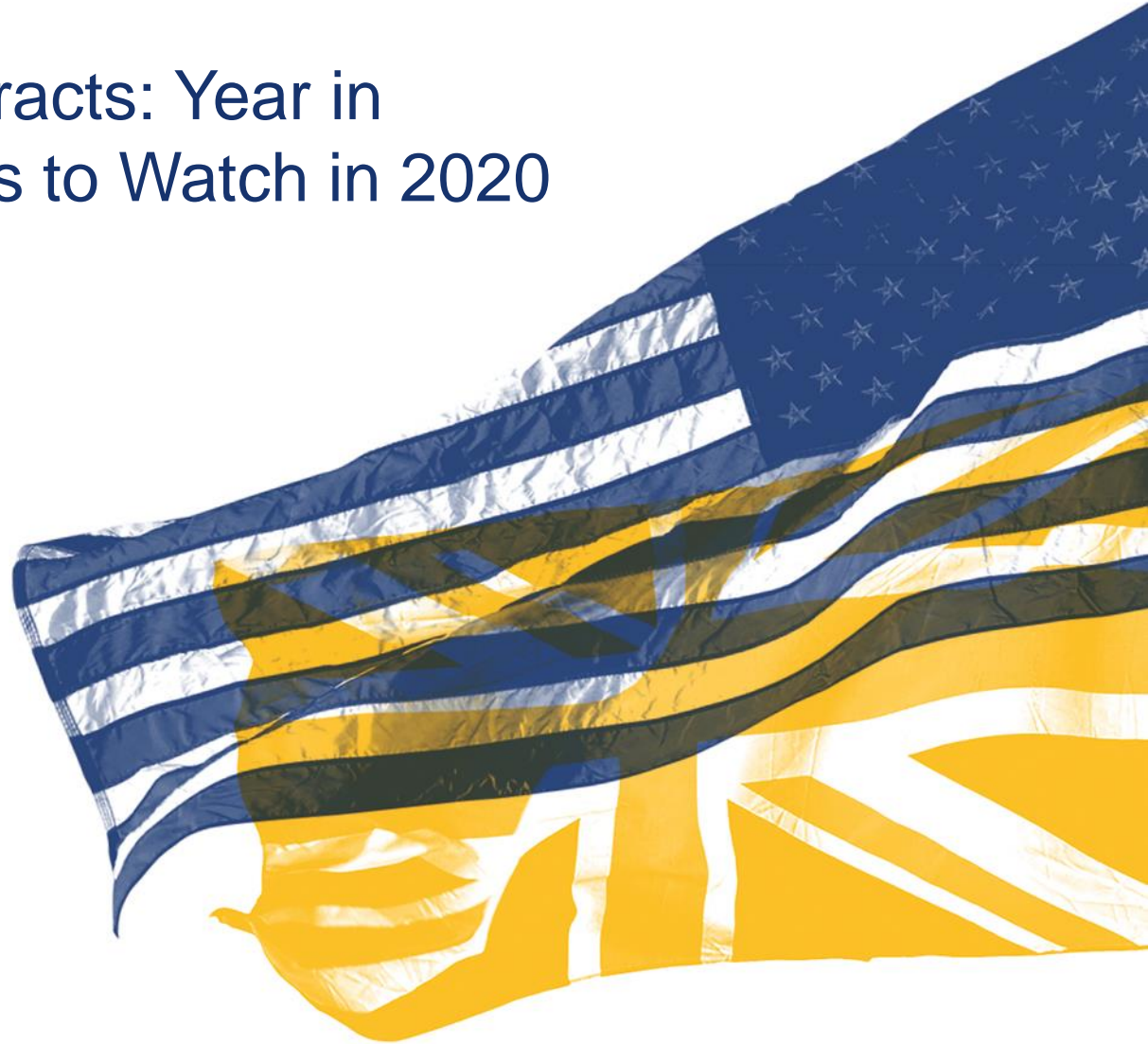


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# Government Contracts: Year in Review and Issues to Watch in 2020

January 23, 2020



# Agenda

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- Protests/Claims
- Supply Chain Integrity
- Statutes, Regulations, and Executive Orders
- Procurement Collusion Strike Force
- Contract Consolidation/Center of Excellence
- Merger & Acquisition Trends and Industry Outlook

# Protests/Claims



# Bid Protests - Statistics

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	<b>FY2019</b>	<b>FY2018</b>
Cases Filed	2198	2607
Cases Closed	2200	2642
Merit (Sustain & Deny)	587	622
Number of Sustains	77	92
Sustain Rate	13%	15%
Effectiveness Rate	44%	44%
ADR (cases used)	40	86
Hearings	2%	.51%

Per GAO Bid Protest Annual Report to Congress for Fiscal Year 2019 (Nov 5, 2019)

# Most Prevalent Grounds for Sustaining Protests

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- Unreasonable technical evaluation
- Inadequate documentation of the record
- Flawed selection decision
- Unequal treatment
- Unreasonable cost or price evaluation

# Bid Protests – Interesting Decisions

## *MCR Federal, B-416654.2; B-416654.3 (Fair Opportunity)*

- *MCR Federal, LLC*, B-416654.2; B-416654.3, Dec. 18, 2018
- Protest of USAF FOPR under GSA OASIS for acquisition, financial and admin support services
- MCR initially lost award to higher-priced, higher-rated competitor
- MCR filed protest and corrective action was taken
- Re-evaluation included interchanges to MCR citing lack of experience for 53 of 58 proposed FTEs, and concern about use of contingent hires
- Interchange instructed MCR that FPRs were due in 2 days
- MCR protested citing FAR 16.505 “fair opportunity”

# Bid Protests – Interesting Decisions

## *MCR Federal (cont'd)*

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- USAF took corrective action by extending the due date 6 days, giving MCR a total of 8 days
- MCR sought 30 days; GAO did not dismiss as moot
- GAO found that 8 days was not sufficient in light of the unique circumstances of the case
- **Takeaway:** Agencies still have significant discretion in determining proposal requirements, but if a requirement is unreasonable to meet, a protest may be successful

# Bid Protests – Interesting Decisions

## *Inerso Corp.; B-417791; B-417791.3 (LPTA)*

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- *Inerso Corp.*, B-417791, B-417791.3, Nov. 4, 2019
- Solicitation Protest of USAF RFQ for task order for IT services under GSA STARS II
- RFQ calls for evaluations based on:
  - Technical Acceptability;
  - Past Performance (PP); and
  - Price
- Agency was to rank quotes according to price, low to high
- Then evaluate five lowest-price quotes as either technically acceptable or unacceptable
- If acceptable, then PP confidence is rated as “substantial”, “satisfactory”, “no” or “unknown”
- Agency then conducts a best value tradeoff using PP and Price, equally weighted



# Bid Protests – Interesting Decisions

## *Insero Corp. (cont'd)*

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- Insero argued that USAF violated FY2017 NDAA limitation on using LPTA criteria because RFQ fails to provide tradeoff between price and technical
- USAF cited to FAR 15.101-2(a), which says that under LPTA, tradeoffs are not permitted
- GAO focused on LPTA “criteria” versus “process”
- Relying upon *Chevron* deference, GAO agrees with USAF’s interpretation of the NDAA
- **Takeaway:** While some contractors may be hopeful with the restrictions on LPTA, this case may provide a playbook for agencies looking to use LPTA-like process

# Bid Protests – Interesting Decisions

## *Noble Sales Co., Inc., B-418141 (HTRRP)*

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- *Noble Sales Co., Inc.*; B-418141, Jan. 16, 2020
- Solicitation Protest of GSA RFQ for BPA under GSA Schedule 51V to operate hardware store supplies and ancillary services at up to 247 military installations
- 5 non-price evaluation factors, with 3 of them being pass/fail
- 2 remaining factors were technical approach and corporate experience, which were to be adjectivally rated
- Price quotes were to be evaluated “to ensure that offered pricing is fair and reasonable”
- Award to be made on a best-value basis, but will not involve either a LPTA or a best value tradeoff source selection methodology
- Award to be made to the highest technically rated quotation with fair and reasonable pricing

# Bid Protests – Interesting Decisions

## *Noble Sales Co., Inc., (cont'd)*

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- Noble argued that RFQ violated CICA by failing to meaningfully consider price
- GSA argued that evaluating price solely for reasonableness was appropriate under the GAO-endorsed highest-technically rated, reasonably-priced (HTRRP) selection methodology
- GAO agreed with Noble that the RFQ failed to consider the “lowest overall cost alternative”
- GSA 51V prices are already determined to be “fair and reasonable”, thus evaluation scheme did not provide for consideration of lowest price
- GAO refused to extend *Sevatech* which endorsed use of HTRRP due to different facts. In *Sevatech*, price competition was shifted to task order competition. This RFQ contemplated a single-award BPA
- **Takeaway:** Evaluation Schemes must be analyzed quickly to ensure agency is considering lowest overall cost alternative before single award

# Bid Protests – Interesting Decisions

## *Leupold Stevens, Inc., B-417796 (Out of Scope)*

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- *Leupold Stevens, Inc., B-417796, Oct. 30, 2019*
- Leupold protested a mod to a Navy contract held by Sig Sauer for purchase of a gun scope
- Leupold argues that the modification for the purchase and installation of an internal reticle in the gun scope is outside the scope of the awarded contract
- Sig Sauer's gun scope had a wired reticle, while the modification was for a glass-etched reticle
- Glass-etched reticle are more expensive, and Leupold and other offerors had proposed glass-etched reticle
- The test is whether offerors could have anticipated this type of change
- GAO found the change out of scope given restrictive solicitation language and significant cost increase (\$9M mod to a \$14M contract)
- **Takeaway:** Even after a contract loss, remain diligent as there may be an opportunity to get back in the game

# Claims -- Interesting Decisions

## *Cameron Bell Corp. d/b/a Government Solutions Group*, ASBCA No. 61856

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- *Cameron Bell Corp. d/b/a Government Solutions Group*, ASBCA No. 61856 (May 1, 2019)
  - ASBCA has jurisdiction to review if CO acted reasonably in rendering CPARS rating but cannot order the Government to revise the rating
- *Alutiiq Manufacturing Contractors, LLC v. U.S.*, No. 15-881C (Fed Cl. Jun. 27, 2019)
  - Overturned Agency's T4D because COFC found decision based on a series of contract disputes, poor practices, conflicting personalities and lack of effective communication
  - Court found that the agency didn't consider a number of the factors under FAR 49.402-3(f); being behind schedule not enough
  - **Takeaway:** Court applies a relatively high standard of proof in T4D cases. Both sides need to make their case objectively.

# Supply Chain Requirements



# Supply Chain-Specific Requirements

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- Vendor-specific prohibitions
- Cybersecurity / CMMC
- Supply chain best practices

# Vendor-Specific Prohibitions

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- Prohibition on telecommunications and video surveillance equipment manufactured by Huawei and 4 other Chinese companies
  - ❖ Section 889 of 2019 National Defense Authorization Act
  - ❖ Phase I (August 2019) - Interim Rule covers government contracts and subcontracts
  - ❖ Phase II (NLT August 2020) – subject to additional rule-making but likely to ban *any* use of covered telecommunications equipment by government contractors and subcontractors
- Definitional ambiguities
  - ❖ Second Interim Rule in December 2019 – government now provides list of “subsidiaries and affiliates”
  - ❖ “Telecommunications equipment,” “critical technology” and “substantial or essential component” definitions remain unclear
  - ❖ FAR 52.204-24, -25, -26
  - ❖ Unusually broad subcontractor flow down requirement (“all subcontracts and other contractual instruments”)



# Vendor-Specific Prohibitions

## *(cont'd)*

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- Kaspersky Ban
  - ❖ Prohibits delivery or use of items manufactured by Kaspersky Labs and related entities in government contract performance
  - ❖ “Covered article” means any hardware, software, or service that is developed or provided by Kaspersky and related entities
  - ❖ Prohibition includes delivering Kaspersky or using Kaspersky for the “development of data or deliverables first produced in the performance” of a government contract
  - ❖ No prohibition on non-government contract use of Kaspersky
  - ❖ FAR 52.204-23
  - ❖ Mandatory flow down clause for commercial item subcontracts

# DFARS Cybersecurity

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- DFARS 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting
  - ❖ NIST 800-171
  - ❖ Self-certification
- DoD determination that Controlled Unclassified Information (CUI) is not being adequately protected by existing regime
- Aggregate loss of CUI from the Defense Industrial Base (DIB) poses unacceptable risk to national security
- Solution: Cybersecurity Maturity Model Certification (CMMC)
  - ❖ <https://www.acq.osd.mil/cmmc/index.html>

# CMMC

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- Combines various NIST and other standards into a unified cyber security standard
- 5 maturity levels from basic cybersecurity hygiene (Level 1) to highly robust (Level 5)
- DoD RFPs will assign a minimum CMMC certification level based upon the nature and amount of government information to be handled by contractors / subcontractors
  - ❖ Industry concern that Level 5 will become default for DoD RFPs

# CMMC (*cont'd*)

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- Paradigm shift - independent third-party auditor assessment vs. DFARS self-certification
  - ❖ Cost to contractors not yet determined
  - ❖ Certification cost will be “allowable”
  - ❖ Duration of certification not yet determined
  - ❖ DCMA or other DoD entity may perform some higher level assessments
- Broad application
  - ❖ DoD only initially
  - ❖ DoD estimates 300,000 companies will seek CMMC certification
  - ❖ Likely to expand beyond DoD eventually
  - ❖ Applies to subcontractors
  - ❖ No commercial item or COTS exemption

# CMMC (*cont'd*)

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- Schedule
  - ❖ December 13, 2019, draft version 0.7 released
  - ❖ End of January 2020, CMMC final version 1.0 scheduled to issue
  - ❖ June 2020, CMMC levels to appear in RFIs
  - ❖ As early as September 2020, certification may be required to bid on DoD RFPs
  - ❖ Schedule does not appear to be realistic

# What Contractors Should Be Doing

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- Prohibited Vendors
  - ❖ Screen supply chain for prohibited vendors (Huawei, ZTE, Kaspersky)
  - ❖ Supply and service contracts both in play
  - ❖ Flow down clauses to applicable subcontractors and suppliers
  - ❖ Policies and procedures
  - ❖ Representations
  - ❖ Plan for likelihood that even non-government use of Huawei and the other Chinese vendors to become prohibited NLT August 2020

# What Contractors Should Be Doing

## *(cont'd)*

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- CMMC
  - ❖ Begin assessing your controls now using draft Version 0.7
  - ❖ Identify which requirements you currently meet and where gaps exist at Levels 1-5
  - ❖ Plot a course to close existing gaps as soon as reasonably possible
  - ❖ Plan for thorough review of version 1.0 upon release (late January)
  - ❖ Track compliance costs, especially if you are Small Business Concern
  - ❖ Identify and communicate with subcontractors who will need to be CMMC-certified to support your DoD prime contracts
  - ❖ Plan to flow down and collect appropriate CMMC contract commitments from subcontractors

# Statutes, Regulations, and Executive Orders



# Statutes, Regulations and EOs – LPTA Solicitation Restrictions

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- DoD amended DFARS by adding new Section 215.101-2 to implement provisions from 2017, 2018 NDAA's
- Provides limitations and restrictions for use of LPTA
- DFARS 215.101-2-70 now includes list of 7 criteria that must be met in order for LPTA procedures to be permissible for procurement
- DoD must “avoid, to the maximum extent practicable” LPTA procedures for procurements “predominately for the acquisition of”:
  - IT and cybersecurity services, SETA services, advanced electronic testing, or other knowledge-based professional services;
  - Personal protective equipment; or
  - Knowledge-based training or logistics services in contingency operations or other operations outside the U.S., including in Afghanistan or Iraq

# Statutes, Regulations and EOs – LPTA Solicitation Restrictions (*cont'd*)

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- DoD is prohibited from using LPTA for:
  - Items designated as PPE or an aviation critical safety item, when the requiring activity advises the CO that the level of quality or failure of the equipment or item could result in combat casualties;
  - Engineering and manufacturing development for a major defense acquisition program; or
  - An auditing contract
- CO required to document “the circumstances justifying the use of” LPTA procedures
- LPTA limitations are applicable to DFARS Parts 208, 212, 213, 215 and 216
- Proposed Rule to Amend FAR (issued 10/2/19, comments due on or before 12/2/19)

# Statutes, Regulations and EOs – Small Business Issues

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- Small Business Runway Extension Act of 2018, Pub. L. No. 115-324 (Dec. 17, 2018)
- Changes formula for determining if revenue-based small business size standards are met based on average annual receipts for 5 years rather than 3 years
  - Does not change any revenue limits or impact size standards for NAICS based on employee count
- Final Rules includes a 2-year transition where companies may opt-in
- Depending on company's revenues by year, may help or hurt ability to retain small business status
- SBA issued Final Rule (84 Fed. Reg. 66561) implementing the Act on 12/5/19, eff. 1/6/20

# Statutes, Regulations and EOs – Small Business Issues (*cont'd*)

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- SBA Final Rule effective December 30, 2019 (84 Fed. Reg. 65647)
- Change in Subcontractor Status (*13 CFR §125.6(c)*)
  - A prime may no longer count a SSE toward compliance with limitations on subcontracting where the subcontractor ceases to qualify as SSE
  - Treats primes disparately from subs
- Limitation on subcontracting compliance monitoring by CO (*13 CFR §125.6(e)(4)*)
  - Authorizes CO to request information regarding compliance
- Independent Contractor versus employee? (*13 CFR § 125.6(e)(3)*)
  - For purposes of limitation on subcontracting, use 13 CFR § 121.106(a) to determine treatment of an independent contractor
  - Makes treatment uniform across 13 CFR

# Statutes, Regulations and EOs – Miscellaneous Updates

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- Proposed Rule, 84 Fed. Reg. 52420, Comments due 12/2/2019
  - Micro-Purchase Threshold increases from \$3,500 to \$10,000
  - SAT increases from \$150,000 to \$250,000
  - Several agencies, e.g., DoD and GSA have already raised via class deviations
- DFARS Final Rule, 84 Fed. Reg. 39204 (8/9/19) re UCA procedures
  - Modified DFARS 217.7404 to permit a 90-day extension to the 180-day maximum period for undefinitized contract actions; and additional oversight is required for unilateral definitizations that exceed \$50 million
- FAR Final Rule, 84 Fed. Reg. 54760 (10/10/19) amending FAR 2.101 to modify definition of “commercial item” to conform to FY 2018 NDAA § 847
  - Added nondevelopmental items developed exclusively at private expense and sold in substantial quantities to multiple State and local governments or to multiple foreign governments.

# Statutes, Regulations and EOs – FY2020 NDAA

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- Space Force
  - Creates a Space Force Acquisition Council within the Sec. USAF
- Cybersecurity and DOD's Cloud Strategy
  - Section 1648 specifies certain elements that DoD's cybersecurity framework must contain, including identifying the standards and requirements imposed on the defense industrial base and the implementation responsibilities of prime contractors and subcontractors
  - Section 1647 grants a new mission to the National Security Agency (NSA): to advise and assist DoD in its acquisition and adoption of commercial cybersecurity products and services
  - Section 1755 directs DOD's CIO and CDO to develop a policy to transition DOD data to the cloud
  - Section 1651 requires streamlining collection, querying, analysis, and accessibility of metadata that could help track cybersecurity threats

# Statutes, Regulations and EOs – FY2020 NDAA (*cont'd*)

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- Supply Chain Risks
  - Section 845 requires DoD to “streamline and digitize” its approach to identifying and mitigating supply chain risks and develop an analytical framework for risk mitigation across the acquisition process.
  - Section 224 requires DoD to establish trusted supply chain and operational security standards for the purchase of microelectronics products or services
- Cost or Pricing Data Requirements
  - Section 803 amends TINA such that the CO shall not make a F&R determination “based solely on historical prices paid by the Government”
  - Section 803 provides that an offeror who fails to make a “good faith effort to comply with a reasonable request” by the government to submit “other than certified” COPD is ineligible for award
  - Section 803 requires DoD to produce an annual report identifying offerors that have denied “multiple requests” for other than certified COPD over the preceding three years but nevertheless received an award

# Statutes, Regulations and EOs – FY2020 NDAA (*cont'd*)

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- Security Clearances
  - Authorizes spending and provides for changes directed at improving the security clearance process
- Commercial Goods and Services
  - Places a requirement to estimate the costs associated with GSA's e-commerce initiative to establish a program to enable government agencies to procure commercial items through a government-wide e-commerce portal



# Statutes, Regulations and EOs – Domestic Preference EOs

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- EO 13858 – Strengthening Buy-American Preferences for Infrastructure Projects (January 31, 2019)
- EO 13811 – Maximizing Use of American-Made Goods, Products, and Materials (July 15, 2019)
  - Directs FAR Council to consider proposing FAR provisions that change threshold of U.S. content from 50% to 55% for end products and 95% for iron and steel components for Buy American Act

# Procurement Collusion Strike Force



# Government Contractors Facing Heightened Antitrust Scrutiny

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- November 2020 – DOJ established Strike Force to counter collusion between ostensible competitors for federal contracts/grants/program funding
  - <https://www.justice.gov/procurement-collusion-strike-force>
- Continues trend of pursuing bid-rigging and procurement fraud cases, e.g. 2018 prosecution of Korean energy companies for bid-rigging on contracts to supply fuel to US military bases
- Formalizes cooperation among US attorneys
- Adopts improved data analytics programs
- Launches public website and hotline to report offenses

# Avoiding Risks

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- Identify “red flags”
  - <https://www.justice.gov/atr/red-flags-collusion>
- Train internal teams on what not to do and why current practices are ok (whistleblower prevention)
- Update compliance program based on DOJ corporate compliance guidance updates
- Avoid collaborative agreements or “understandings”
  - Regarding pricing, *i.e.* price-fixing
  - As to which company would win contract, *i.e.* bid-rigging
  - To allocate opportunities by geography, customer or product

# Contract Consolidation/Centers of Excellence

# GSA Schedule Consolidation

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- Combines 24 GSA Multiple Award Schedule (MAS) contract solicitations with 940 Special Item Numbers (SINs) into a single MAS Solicitation with approximately 300 SINs
  - VA medical supply and equipment Schedules not included in consolidation
- MAS Consolidation is part of an initiative to simplify the acquisition and contract administration process for GSA and industry
  - Contractors who qualify for more than one MAS contract have been frustrated by inconsistent GSA practices and terms and conditions
  - Negotiating and managing multiple MAS Contracts is burdensome for GSA and industry
  - Duplication in products and services across different MAS contracts causes confusion and uncertainty for ordering agencies

# MAS Consolidation Timeline

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- Phase One. October 1, 2019. GSA releases the single GSA MAS solicitation
  - New offers must be submitted against the new solicitation, no real impact to existing MAS contractors
- Phase Two. January 15, 2020 (target date). GSA to issue a mass modification (Mass Mod) to transition existing MAS contractors to the new MAS solicitation. Mass Mod will update terms and conditions and SINs to conform with the new MAS solicitation
  - Contractors will have until July of 2020 to review and sign the Mass Mod
  - Contract number, term and option periods will not change unless contractor holds multiple MAS contracts (see Phase III below)
  - No updated Size Status representations
  - Contractors may add new SINs after accepting Mass Mod
  - VIP: If you have negotiated exceptions to standard MAS contract terms, take steps to preserve these notwithstanding acceptance of the Mass Mod

# MAS Consolidation Timeline

## *(cont'd)*

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- Phase Three (No End Date)
  - July 2020, GSA to begin working with companies holding multiple MAS contracts to determine the best option for contractor-specific consolidation, such as:
    - ❖ Allow one MAS contract to expire and transfer approved items to a other MAS contract
    - ❖ Allow all MAS contracts to expire in favor of new proposal if contracts are beyond 2<sup>nd</sup> 5-year option period
  - GSA to work with contractors to determine the best consolidation option, with consideration given to avoiding impact to open orders and Blanket Purchase Agreements (BPAs)



# MAS Consolidation – Key Issues

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- Transactional Data Reporting (TDR). TDR will still apply at the SIN level. If you hold an applicable TDR SIN and choose to participate in TDR, it will apply to the entire MAS contract
- Cooperative Purchasing. Cooperating Purchasing will apply to the applicable SIN only. Unlike TDR, it will not extend to an entire MAS contract
- Order Level Materials (OLM). OLM allows MAS contractors to provide supplies and/or services that were unknown as of MAS contract award. OLM will not be extended to all MAS contracts
- eLibrary. GSA plans to update eLibrary in July of 2020 to show just the single MAS solicitation
- eBuy. GSA plans to update eBuy to conform with the new MAS Solicitation. Ordering agencies will have the ability to issue RFQs against a category or subcategory, but SINs will be removed from eBuy to avoid confusion

# Centers for Excellence

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- The Centers of Excellence (CoE) accelerate IT modernization by leveraging private sector innovation and government services while centralizing best practices and expertise
- The CoE is a White House initiative designed by the Office of American Innovation (OAI), and implemented at GSA within the Technology Transformation Services (TTS) office
- The CoE uses IT modernization as a means to improve government services
- The CoE seeks to partner with industry to take what's been done in the private sector and apply it to, or replicate it in, government

# Merger and Acquisition Trends and Industry Outlook



# M&A Outlook – Aerospace, Defense and Government Services (ADG)

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- Overall optimistic outlook
- “Confidence in deal making continues to be bolstered by a strong defense spending profile and steady growth in passenger traffic supporting commercial backlogs. Our view is that these factors will drive M&A in the final quarter of 2019 and beyond.”
- Total deal value for Q3 YTD 2019 increased by 2.8x to \$80.3 billion when compared with Q3 YTD 2018, largely as a result of the UTC/Raytheon transaction.
- The total deal volume for Q3 YTD 2019 declined by 8% to 316 deals when compared to Q3 YTD 2018, but remained flat when compared with the ten-year average.
- Source: <https://www.pwc.com/us/en/industries/industrial-products/library/aerospace-defense-quarterly-deals-insights.html>

# ADG Industry Outlook

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- Demand for military equipment is on the rise as governments across the globe focus on military modernization, given increasing global security concerns
- Global defense expenditure is expected to grow between 3 and 4 percent in 2020 to reach an estimated US \$1.9 trillion
  - Source: <https://www2.deloitte.com/global/en/pages/manufacturing/articles/global-a-and-d-outlook.html>
- \$738 billion slated for defense spending in 2020
- Foreign military sales of \$55.6 billion in 2019 was about equal to 2018
- Focus on military modernization is supported by both sides of the aisle which increases investor confidence
- Increased revenue across multiple sectors
- The industry substantially outperformed the S&P 500 in 2019
- Increase in R&D/Fixed Assets investments

# ADG Industry Outlook

*(cont'd)*

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- 2019 saw a consistent growth in enterprise multiples as compared to 2018 primes, defense electronics, and government services sectors
- Large valuations in 2019 indicate momentum for 2020
- Investor confidence backed by significant stock gains and preferable Wall Street buy ratings
- Government services companies maintain focus on growth through M&A
- Speculation that we will continue to see a trend of high performance in 2020 because the industry performs well relative to other industries in election years
- Optimism potentially mitigated by uncertainties like impeachment, global threats, trade wars, etc.

# Innovation in Space Technologies

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- A bipartisan budget agreement for 2020 will lead to the creation of a sixth branch of military, the United States Space Force, which will be spun off from the U.S. Air Force Space Command
- The global commercial space sector is likely to see steady investments in new and existing space technologies and services, with funding coming primarily from governments and venture capital
- New government appreciation for threats posed by anti-satellite (ASAT) weapons has caused a sharp increase in concern over the military use of near-Earth space, leading to increased investments in research, technology, and commercial services, as well as altered organizational strategies to improve the resiliency of military space capabilities and capacities
- These investments and organizational expected to continue, but significant changes to the military use of space, *i.e.*, placing non-satellite weapons into space, remains unlikely, and the deployment of new military space concepts will not occur until later in the decade
- Source: <https://www2.deloitte.com/global/en/pages/manufacturing/articles/global-a-and-d-outlook.html>
- Source: [https://emmaassets.s3.amazonaws.com/1zr/50b47ac2ff9bf1f4744251499ec6bf61/C4ISR\\_Quarterly\\_Newsletter\\_Q4\\_2019.pdf](https://emmaassets.s3.amazonaws.com/1zr/50b47ac2ff9bf1f4744251499ec6bf61/C4ISR_Quarterly_Newsletter_Q4_2019.pdf)

# Proposed Raytheon Company/United Technologies Corporation MegaMerger

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- Announced in October 2019, and expected to close in the first half of 2020, the combined company will be the second-largest aerospace and defense company in the U.S. after Boeing
- Estimated \$74 billion in revenues resulting in \$14 billion in EBITDA for 2019 (proforma)
- Yearly R&D fire power of over \$8 billion
- “Today’s vote [approving the merger] reflects a significant step on our path to unite two world-class companies with complementary technologies and supports our view that this merger of equals will create additional growth opportunities while delivering benefits to our shareowners, customers and employees.” - Raytheon Chairman and CEO Tom Kennedy
- Source: <https://www.azcentral.com/story/news/local/arizona-breaking/2019/10/12/raytheon-united-technologies-shareholders-approve-megamerger/3966398002/>
- Source: <https://www.alixpartners.com/insights-impact/insights/record-merger-acquisition-activity-in-aerospace-defense-2019/>



# Spirit Aerosystems Holdings Inc./Bombardier Aerostructures Deal

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- Announced in October 2019, Spirit will purchase select assets from Bombardier; the assets produce parts for the Airbus SE A320 and A220 jets
- The purchase of these assets is part of Spirit's strategy to secure additional business at Airbus, expand military and helicopter aircraft work, and strengthen its non-U.S. operations
- Estimated \$1.09 billion transaction; cash consideration will be \$500 million and Spirit will assume approximately \$300 million in net pension liabilities and approximately \$290 million of government grant repayment options
- Source: <https://kippsdesanto.com/kippsdesantos-dealview-top-10-ma-deals-of-the-quarter-15/>

# Leidos Holdings, Inc./Dynetics, Inc. Acquisition

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- Leidos' \$1.65B acquisition of the employee-owned and privately-held national security solutions provider, Dynetics
- Expected to add \$110M of EBITDA to Leidos in 2020
- The acquisition of Dynetics will strengthen Leidos' position in existing markets (information technology, engineering, and science in the defense, civilian, and healthcare industries), while accelerating research within the Leidos Innovations Center to develop new technologies
- Third and largest acquisition for Leidos in the past 18 months
- This deal reflects the broader trend of public buyers seeking acquisitions that add scale and provide differentiated solutions, such as advanced engineering and prototyping, intellectual property, and embedded customer positioning within the Department of Defense and Intelligence Community
- Source: <https://kippsdesanto.com/kippsdesantos-dealview-top-10-ma-deals-of-the-quarter-15/>

# Scrutinizing Inbound Investment and Acquisitions

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- Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) broadened jurisdiction of Committee on Foreign Investment in the United States (CFIUS) to review foreign investments in the United States for national security concerns to include certain noncontrolling investments
- Proposed rules implementing FIRRMA announced in Fall of 2018; on January 13, 2020, the Department of Treasury released final rules effective February 13, 2020, which *inter alia* –
  - Implement mandatory reporting requirements for certain foreign government-affiliated transactions
  - Impose mandatory filing requirements for certain investments involving critical technologies
- Most deals are approved but some have been impacted and had to implement mitigation measure for approval, e.g. acquisition of control interests in certain U.S. tech companies by Chinese investors

# Questions?

