

# Prime Insights Webinar: Quarterly Compliance Update



# About JAMIS

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JAMIS Prime is the top cloud ERP solution designed for the management of federal contracts and grants

- Built in the Cloud from day one
- Decades of experience built into a modern technology platform
- The JAMIS team brings the process automation expertise from over 1,000 implementations
- Solutions designed to enable growth, reduce risk, and simplify regulatory compliance





Capital Edge government contracts consultants combine their unique backgrounds and experience to support Government Contractors and Federal Grant Recipients with services like:

- DCAA Compliance
- Federal Acquisition – Regulations
- Contractor Purchasing System Reviews – CPSR
- Incurred Cost Submissions – ICS
- Data Analytics & Business Intelligence
- Federal Grants Compliance including:
  - Uniform Guidance
  - 2 CFR 200
  - Indirect Cost Recovery



# Welcome **CAPITAL EDGE**

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## **NDAA for 2022**

- **Supply Chain Security and Sourcing**
- **Made in America**
- **Miscellaneous**

## **Final Rule**

- **Buy American Act**

## **Executive Orders / Legislation**

## **Open DFARS / FAR Cases**

- **2022 NDAA**
- **2021 NDAA**
- **2020 NDAA**
- **2019 NDAA**
- **Executive Order**

## **DCAA Updates**

- **MRD – COVID-19**
- **Business Systems Audit Environment**

# **Agenda**



# Supply Chain Security and Sourcing

## Sections 802, 841, 847, 848, 851

- Enhanced data tracking capabilities to assess, monitor and mitigate the DIB's supply chain risk related to critical DoD items
- Prohibition on acquisitions of PPE (COVID-19) from 'covered nations' – China, Russia, North Korea, Iran
- Extension until January 1, 2027 restrictions on acquisition of printed circuit boards from China, Russia, North Korea, Iran
- Prohibition on the obligation or use of funds for purchase of products from the Xinjiang Uyghur Autonomous Region (XUAR)
- Develop and implement a plan to reduce U.S. reliance on purchase of goods or services from China, Russia, North Korea, Iran

## NDAAs 2022

### Supply Chain Security and Sourcing



## Made in America

### Sections 809, 842

- Starting February 1, 2023 and through 2025, annual reporting by the DoD to Congress of contractor violations with 'certain domestic preference laws' (Buy American Act, Berry Amendment, Specialty Metals)
- Expansion of 'high priority' products for DoD analysis, recommendation and action with focus on domestic sourcing
  - Beef products
  - AC-DC power converters
  - Armor on selected ground vehicles
  - Optical and cable equipment

# NDAA 2022

## Made in America





# Miscellaneous

## Sections 803, 814, 817, 855

- Acquisition of innovative commercial items or services on a fixed-price basis using competitive procedures
  - Innovative – new technology, process, method or application, including R&D
- Accelerated payments to small business subcontractors (15 days after receipt of invoice)
  - Replaces ‘agrees or proposes’ with ‘agrees’
- Repeal of preference for use of fixed-price contracts and approval for award of cost reimbursement contracts
- Contractor notification to DoD for individuals performing on a covered contract in China
  - Covered contract – greater than \$5M and not for commercial goods or services

# NDAA 2022

## Miscellaneous





## Buy American Act

- FAR Rule (Case No. 2021-008) – Publication date March 7, 2022; effective date 10/25/22
- FAR Subpart 25.101
- E.O. 14005 – Ensuring the Future Is Made in All of America by All of America's Workers
- Domestic Content Requirements
  - Current rule – 55%
  - 10/25/22 – 60%
  - CY 2024 – 65%
  - CY 2029 – 75%
- Domestic end product means manufactured in the U.S. and the cost of domestic components must exceed XX% of the cost of all components

## Final Rule



## Executive Order

- E.O. 14063 – Use of Project Labor Agreements for Federal Construction Projects; February 4, 2022
- Requires contractors of all tiers to enter into PLAs with appropriate labor organizations
- Applies to federal construction contracts exceeding \$35M; limited exemptions exist at CO's discretion
- PLAs will, among other things, supersede existing CBAs and provide guarantees regarding work stoppages or other disruptions
- FAR council has until June 6, 2022 to draft a proposed rule

# Executive Order / Pending Legislation



## Pending Legislation

- Fair Pricing with Cost Transparency Act of 2022; January 19, 2022
- Carolyn Maloney, D-NY, Chair of the House Committee on Oversight and Reform
- DoDIG reports 2022-043 released December 13, 2021 and 2019-060 dated February 25, 2019
- “If the contracting officer determines that the information on the prices submitted by the offeror or contractor is not adequate for evaluating the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract, the offeror, contractor, or subcontractor shall be required to submit to the contracting officer uncertified cost information to the extent necessary to determine the reasonableness of such price.”

## Executive Order / Pending Legislation



## As of March 4, 2022

- 2022-D007 – repeal of preference for fixed-price contracts; 2022 NDAA Section 817; final rule expected March 2022
- 2022-D008 – use of authorized funds in XUAR; 2022 NDAA Section 848; draft proposed rule expected March 2022
- 2022-D009 – acquisition of PPE from selected countries; 2022 NDAA Section 802; draft proposed rule expected March 2022
- 2022-D010 – contractor employees performing in China; 2022 NDAA Section 855; draft proposed rule expected March 2022
- 2022-D011 – acquisition of printed circuit boards; 2022 NDAA Section 851; draft proposed rule expected March 2022

# Open DFARS Cases



## As of March 4, 2022

- 2021-D006 – DFARS business system audits, replacement of ‘significant deficiency’ with ‘material weakness’; 2021 NDAA Section 806; draft proposed rule under review
  - Aligns with financial statement audit and reporting procedures and is a tiered approach to classification of internal control deficiency
  - Material weakness means a deficiency or combination of deficiencies in the internal control over information in contractor business systems, such that there is a reasonable possibility that a material misstatement of such information will not be prevented, or detected and corrected, on a timely basis

# Open DFARS Cases



## As of March 4, 2022

- 2020-D008 – requiring other than certified cost or pricing data; 2020 NDAA Section 803; draft final rule under review
  - Amends TINA to provide that, when determining whether an offeror's price on a contract or subcontract is fair and reasonable, the contracting officer shall not make such a determination “based solely on historical prices paid by the Government”
  - If the CO is unable to determine whether an offeror's prices are fair and reasonable by any other means, an offeror who fails to make a “good faith effort to comply with a reasonable request” by the government to submit “other than certified” cost or pricing data is ineligible for award
    - ✓ Absent a finding by the head of the contracting activity that the award is in the government's best interests

# Open DFARS Cases



## As of March 4, 2022

- 2022-003 – PLAs in connection with large-scale federal construction projects; E.O. 14063; draft proposed rule under review
- 2021-021 – COVID-19 safety protocols for federal contractors; E.O. 14042; draft proposed rule under review by CAAC legal
- 2021-016 – minimizing risk of climate change; E.O. 14030; draft proposed rule expected March 2022
  - Amendment of the FAR to ensure that major agency procurements minimize the risk of climate change and consider the social cost of greenhouse gas emissions in procurement decisions

# Open FAR Cases





## As of March 4, 2022

- 2021-2015 – disclosure of climate-related financial risk; E.O. 14030; draft proposed rule expected March 2022
  - Directs the FAR Council to consider amending the FAR to require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk and to set science-based reduction targets
- 2021-014 – Minimum wage for contractors; E.O. 14026 and DOL regulations; interim rule published January 26, 2022 and effective January 30, 2022

# Open FAR Cases



## As of March 4, 2022

- 2018-020 – construction contract administration; 2019 NDAA Section 855; draft final rule under review
  - Requires, for solicitations for construction contracts anticipated to be awarded to a small business, notification to prospective offerors regarding agency policies or practices in complying with FAR requirements relating to the timely definitization of requests for equitable adjustment and agency past performance in definitizing such requests

# Open FAR Cases



## Paycheck Protection Program (Sections 1102 and 1106); (PPP loans)

- SBA loan intended as direct incentive to keep workers on payroll, and can be used for:
  - Payroll costs up to for prorated salaries not exceeding annual amount of \$100k, health care, rent, utilities, etc.
  - Forgiveness requires use for payroll costs, interest on mortgages, rent, and utilities

# DCAA Updates

## CARES Act Overview



## Employee Retention Credit (Section 2301);

- Fully refundable tax credit for employers equal to a percent of qualified wages
- An eligible employer can receive both the tax credit for qualified leave wages under the FFCRA and the Employee Retention Credit under the CARES Act, but not for the same wages
- Credit of 50% for qualified wages paid between 3/12/20 and 12/31/21, 70% for qualified wages paid 1/1/21 to 7/11/21

## Payroll Taxes Deferral (CARES Act Section 2302)

- Employer deferral of the deposit and payment of the employer's portion of Social Security taxes, notwithstanding receipt of PPP loans, even if forgiven later

# DCAA Updates

## CARES Act Overview



## FAQs in MRD - Revised Audit Alert on Coronavirus Legislation and Regulations addressing incurred cost and forward pricing concerns

### ➤ Incurred Cost – PPP Loans

- Credits applicable under FAR 31.201-5 in the same manner in which funds were spent by contractor, anticipating discrete tracking of how funds were used for covered expenses, direct or indirect
- “...forgiven loan amounts used solely to pay employees working on commercial effort would not create a credit or refund for the Government”
- “Until forgiven, PPP loans are a liability of the contractor and, therefore, should be on the balance sheet. Costs paid for by these loans are normal contract costs.”

## DCAA Updates

CARES Act MRD dated 4/23/21



## FAQs in MRD – CARES Act (Cont'd)

- Incurred cost – Paid Leave
  - Anticipates discrete capture of costs to separate cost category – Other Direct Costs (ODC) COVID-19
  - Avoids CAS compliance issues as “initial adoption of cost accounting practice for the first time a cost is incurred.”
- Forward Pricing
  - Anticipated changes in contractor performance resulting from impacts of COVID-19 should be incorporated into forward pricing estimates
  - Consideration for whether COVID-19 impacts qualify as contingencies to be included or excluded from proposed cost estimated in accordance with FAR 31.205-7

# DCAA Updates

CARES Act MRD dated 4/23/21



## FAQs in MRD – CARES Act (Cont'd)

### Incurred Cost – PPP Loans

“How would the computation of an indirect rate be adjusted if the funds of a forgiven PPP loan were used to pay indirect expenses?”

When the funds from a PPP loan were originally used to pay indirect expenses, the amount of indirect pool costs allocable to a contract should be adjusted for any forgiven amount.”

<u>Cost Element</u>	<u>Amount</u>
Rent	\$ 125,000
Other Overhead Costs	400,000
Subtotal	\$ 525,000
Less PPP Loan Forgiveness:	
Rent	(100,000)
Total Overhead Pool	\$ 425,000
Overhead Base	\$ 1,725,000
Overhead Rate*	25%

# DCAA Updates

CARES Act MRD dated 9/21/21





## FAQs in MRD – CARES Act (Cont'd)

### Incurred Cost – PPP Loans

“How should an indirect rate be applied if the funds of a forgiven PPP loan were used to pay direct contract costs?

Indirect costs should be allocated on the basis of a beneficial/causal relationship; which means that allocation bases should include all costs that contributed to generating the indirect pool. Therefore, forgiven PPP loans do not change how indirect rates are applied.”

<u>Cost Element</u>	<u>Amount</u>
Direct Labor	\$ 1,475,000
PPP Loan Direct Labor	250,000
Total Contract Direct Labor	\$ 1,725,000
Overhead Rate	25%
Overhead Applied	\$ 431,250

# DCAA Updates

CARES Act MRD dated 9/21/21



## Business System Audit Structure and Timing

- Preliminary Risk Assessments typically include the following:
  - Entrance conference
  - Preliminary data requests (written narratives, descriptions of controls)
  - Business system walkthroughs (contractor presentations of business system processes, controls, identification of key personnel, manual and automated systems, etc.)
  - System Demonstrations (DCAA observation of significant processes)
- Data requests and reviews of policies and procedures significantly front-loaded as part of Preliminary Risk Assessment

# Current Audit Environment

- What to Expect from Business System Audits



## Business System Audit Structure and Timing

- Requests for contractor provided written narrative varying in complexity and format, with the most significant following the audit program closely while requesting detailed documentation of **Key Controls**
- Contractor experiences vary relative to period subject to testing (lookback of proposals or transactions ranging from one year to three months, and in some cases concurrent testing of controls in conjunction with ongoing audits of proposals, incurred cost, etc.)
- Expect timeframe for completion of audit to likely exceed one year from notification letter to issuance of final audit report

# Current Audit Environment

- What to Expect from Business System Audits



# QUESTIONS?

# Thank You!

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