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Federal Government Contracting: ARPA-21 Relief and Contracting Considerations

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Despite many industries suffering setbacks over the past year due to the global COVID-19 pandemic, federal contract spending has grown year over year since 2016, including this past year, and appears to have no end in sight. With an average annual expenditure in excess of \$600 billion, and a projected increase in the coming years, it is expected that more businesses will explore becoming government contractors as the country gets closer to “opening up” and moving past the pandemic. This alert discusses the benefit to contractors extended by the economic relief package recently signed into law and is a reminder of some of the key considerations for engaging in government contracting.

Government contracting-related provisions of ARPA-21

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARPA-21), a \$1.9 trillion economic relief package. ARPA-21 extended the benefits for federal contractors under Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Initially introduced by the CARES Act, and extended by the Consolidated Appropriations Act, ARPA-21 extends the Section 3610 benefits through September 30, 2021. Section 3610, titled “Federal Contractor Authority,” reimburses federal contractors for paid leave provided to employees or subcontractors unable to work for the federal contractor due to the pandemic. The benefits of Section 3610 allow federal contractors in many scenarios to continue paying their personnel on paid leave, thereby keeping their workforce in a “ready state” to work through the pandemic. A “ready state” is defined as a contractor’s ability to mobilize and resume performance in a timely manner. Section 3610 enables federal contractors to remain in a ready state by retaining, and paying, personnel despite the interruptions caused by the pandemic. The Department of Defense estimated that defense agencies

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had reimbursed at least \$70 million under Section 3610 as of the end of fiscal 2020, a number expected to have significantly increased over the first two quarters of fiscal 2021.

This general attention by Congress and the President to the health of the government contracting industry is reflective of the government's dependence on and appreciation for what the industry provides, as well as the growth the industry has enjoyed in recent years. Federal contract spending for fiscal 2020 reached the highest amount ever recorded, and represented a 40% increase from the amount spent in 2016. Further, federal contract spending has grown at an average rate of 9% since fiscal 2016, and increased growth is expected over the coming years.

Government contracting key considerations

For those considering joining the government contracting industry, it is important to note that contracting with the government poses different challenges and risks than contracting with another private party. An overarching theme found in nearly all aspects of government contracting is the amount of transparency required when dealing with the government. Unless an exemption applies, certain regulatory and statutory requirements may apply to your contracting opportunity, including disclosure and certification of cost and pricing data, and compliance with certain accounting rules (Cost Accounting Standards (CAS)), cybersecurity requirements, equal employment opportunity requirements, wage and hour laws, and rules regarding intellectual property rights, among other requirements.

There are certain exceptions that can make government contracting a bit less burdensome from a compliance perspective. Before pursuing or entering a contract with the government, one should determine if the goods or services contracted for are exempt from the traditional federal government contracting requirements. For example, if goods and services are customarily sold to the general public for a nongovernmental purpose, an exemption may apply. These exemptions, or related exceptions, can encourage private contractors to more freely contract with the federal government. The government, on the other hand, benefits from an opened marketplace by way of an increased market of contractors and reduced time needed to acquire such goods and services. Arguably, this has resulted in an overall more efficient process and a larger government contractor industry. One should be mindful that even if exempt from certain traditional requirements, the contractor may still be subject to several restrictions generally applicable to all government contracts.

It is important for a government contractor to be aware of, and stay current with, the various rules and regulations that may apply to their company and specific contract. To stay on top of these requirements, and for questions about government contracting or the impact of ARPA-21, please contact the authors of this alert or any member of Butzel Long's Aerospace and Defense Practice Group.

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