

**HIGHLIGHTS****Congress Looks to Be 'Bold' on Procurement, Agency Chief Says**

Federal procurement policy hasn't come to a standstill just because President Trump has yet to appoint someone permanent to run that office, the office's acting chief says. The Office of Federal Procurement Policy takes its policy leads not just from the White House but from Congress, often through the National Defense Authorization Act. Both the Senate and the House are showing an "appetite" for game-changing proposals, says Lesley Field, the OFPP's acting administrator. **Page 421**

**Air Force Plans \$10 Billion GPS III Contest Amid Lockheed Delays**

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**Border Wall Bidders Plead for Trump's Help to Fend Off Opponents**

Construction companies worried about a backlash for working on President Trump's proposed border wall are pushing for federal protections, including stopping cities and states from penalizing them, as a new battle erupts over his crackdown on illegal immigration. The Associated General Contractors of America also wants assurances that local authorities will provide reasonable protection for workers and equipment on job sites, as well as contractor reimbursement for security costs or damage from vandalism. **Page 423**

**That No-Bid Contract to Fix Puerto Rico's Grid Wasn't Only One**

While federal emergency managers have assailed Puerto Rico's no-bid contract to restore power, they are issuing noncompetitive awards themselves at the fastest rate in nearly a decade. FEMA awarded \$200 million in single-source contracts in the fiscal year that ended Sept. 30, the most since 2008, according to federal contracting data compiled by Bloomberg Government. It awarded nearly that much last month alone. **Page 424**

**Trump Seeks \$5.9 Billion Extra for Missile Defense, Afghanistan**

President Trump is asking Congress to appropriate an extra \$5.9 billion by year's end to strengthen missile defense and fund his plan to send more troops to Afghanistan. In addition, Trump made another pitch for \$1.6 billion to start building the wall along the U.S.-Mexico border. The request had long been anticipated on Capitol Hill. However, the scope of the request grew to reflect more recent threats by North Korea. **Page 426**

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**PROPOSAL EVALUATION:** DynCorp International LLC failed to show that the State Department improperly awarded AAR Airlift Group Inc. a \$10 billion contract to provide anti-narcotics flight operations, the U.S. Court of Federal Claims says. **Page 438**

**PROPOSAL EVALUATION:** The Census Bureau must reopen a competition to provide mobile devices to support the 2020 census following AT&T Corp.'s protest of CDW Government LLC's \$283 million contract award, the Government Accountability Office rules. **Page 438**

**DOD:** Crowley Logistics Inc. defeated a protest challenging its \$7 billion contract to provide freight transport services for the Defense Department, the U.S. Court of Federal Claims says. **Page 438**

**FEDERAL CONTRACTS REPORT**

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# News

## Acquisition

### **Congress Looks to Be 'Bold' On Procurement, Agency Chief Says**

Federal procurement policy hasn't come to a standstill just because President Donald Trump has yet to appoint someone permanent to run that office more than nine months after he was inaugurated, the office's acting chief said Nov. 2.

Instead, the Office of Federal Procurement Policy is moving forward with a range of innovations as it continues to implement policies from the Obama administration, including the acquisition streamlining program called category management, Lesley Field, the OFPP's acting administrator, said at the Vision Federal Market Forecast Conference presented by the Professional Services Council.

Field touted her agency's progress in further enmeshing category management into agencies' procurement processes; designating more than two dozen new "best-in-class" contracts; and pursuing new policies that will help "take the digital IT movement into the acquisition workforce."

"There's been a lot of uncertainty, I think, and that's sort of always the case in a transition year," Field said. "I think it's beginning to come clear what the priorities are. And more importantly, how we're going to get there."

**Game Changers** The OFPP takes its policy leads not just from the White House but from Congress, often through the National Defense Authorization Act. Both the Senate and the House are showing an "appetite" for game-changing proposals, she said.

"They're really looking to be bold here," Field said. "I think the focus on commercial items, commercial practices and thinking about new ways of buying things — whether it's online marketplace or some other changes that have been suggested — I think that shows that folks are really looking to do things in a different way."

A provision in the House version of the NDAA would require the General Services Administration to set up online marketplaces that would allow contractors to sell commercial items to federal agencies.

**Lowering Barriers** The OFPP has been working on new "playbooks" and case studies that agency contracting officials can relate to in an effort to speed and simplify the process, Field said.

Instead of putting forth a giant request for proposals and getting "voluminous" responses, contracting officers instead could ask for a short capabilities statement and winnow the list of bidders from there, Field said. Or agencies could request that bidding companies that sell training services demonstrate "mock-classroom" proposals.

At the same time, building and submitting prototypes may make sense in more cases, instead of "getting to the end of an acquisition" without a product that agencies want to buy, she said.

Such changes could lower barriers for small-business and would-be first-time government contractors to consider entering the market.

"We're trying to build that culture of change," she said.

**More Marketing** The Obama-era acquisition innovation Field said she's most excited about is Acquisition 360, a feedback tool asking contractors to evaluate agency acquisition processes. The surveys have been offered to vendors after they've received their final post-award "debrief," according to a 2015 guidance from then-OFPP Administrator Anne Rung.

However, it appears industry doesn't yet share Field's excitement about the 15-question survey.

When Field asked how many conference attendees had filled out an Acquisition 360 survey on one of their contracts with the government, no one in the crowd of about 200 raised his or her hand, according to a brief scan of the room.

"A lot more marketing we need to do there," Field quipped. The crowd laughed.

The sparse response didn't keep her from selling the survey. "That would be incredibly helpful as we move forward," Field said. "We're going to scale this up. It's my vision to have this after every acquisition."

**'We've Seen This Movie'** The lack of permanent leadership at OFPP hasn't slowed her staff, or stopped them from being able to prioritize — concerns industry has expressed in the past, Field told reporters.

"We've seen this movie. It hasn't been unexpected," she said.

BY SAM SKOLNIK

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## Air Force

### **Air Force Plans \$10 Billion GPS III Contest Amid Lockheed Delays**

The Air Force will hold a \$10 billion contest for as many as 22 new Global Positioning System satellites that's likely to pit Lockheed Martin Corp. — which is years behind schedule on the ones it's already building — against Boeing Co. and possibly Northrop Grumman Corp.

A request for proposals on the GPS III satellites will be issued "in the very near future," pending its review by the Pentagon's Joint Staff, Lieutenant General John

Thompson, head of the Air Force Space and Missile Systems Center, told reporters Nov. 2.

"We wouldn't be doing a competition if we didn't think there were viable alternatives to the current Lockheed Martin system," said Thompson, who added that "there are many vendors that are interested."

Although Thompson wouldn't name names, Colonel Steven Whitney, the GPS program director, told reporters that Boeing and Northrop each produced a "demo of a working payload" in a preliminary market research effort. Boeing lost the original GPS III contract to Lockheed in 2008.

Lockheed would have a "fair competitive advantage" because it's already on contract to build the first 10 satellites, Thompson said. But the Defense Contract Management Agency and the Air Force have been open in criticizing a cascade of delays under Lockheed.

The management agency estimates the average delivery date for the second through eighth of Lockheed's GPS III satellites has now increased from nine months beyond the contracted delivery date to 19 months. Subcontractor technical difficulties with failed or damaged components for the satellite's navigation payload are the main reason, according to the Pentagon agency.

**Cost of Delays** The delays have resulted in a \$600 million increase in cost, General John Raymond, head of the Air Force Space Command, said in an email. That brings the projected cost for the satellites to \$5.4 billion.

The Global Positioning System developed by the U.S. military provides turn-by-turn directions on the smartphones of drivers and hikers, as well as coordinates for bombs hitting Islamic State targets in Syria and Iraq. New GPS III satellites promise increased accuracy for navigation, a signal compatible with similar European satellites, and improved security against cyberattacks.

The latest GPS III delays have been flagged to Defense Department officials who are briefing Ellen Lord, the new undersecretary for acquisition, technology, and logistics for a Nov. 6 meeting with top Lockheed officials, including CEO Marilyn Hewson, according to an official who asked not to be identified because the meeting hasn't been publicly announced.

Although previously publicized problems with failing and damaged capacitors on the satellites have been resolved, the DCMA believes time lost to the production delays can't be recovered, so the agency has factored them into its calculations, agency spokesman Mark Woodbury said in an email.

**Subcontractor Harris** The more recent delays have been caused by the "continued difficulty" of subcontractor Harris Corp. in producing the satellite's Mission Data Unit, Woodbury said. It's the critical processor that performs the satellite's primary mission — creating precise civil and military timing messages used for navigation signals, according to Harris.

GPS III satellites five through eight are estimated by the contracting agency to be delivered 20 to 21 months late. The fifth, for example, is projected to be delivered in May 2020 instead of December of this year.

The Air Force "is concerned with the continued challenges" the company is having and "expects Lockheed Martin to diligently work with their supplier base to correct issues as they arise," Captain Christine Guthrie, a service spokeswoman, said in an email.

**Lockheed's 'Progress'** Lockheed spokesman Chip Eschenfelder said in an email that "we are laser-focused on delivering high-quality, mission-ready satellites to the Air Force."

Eschenfelder cited "the GPS III program's recent progress with the delivery of the third navigation payload and planned delivery of the fourth this fall and recent integration and beginning of environmental testing" for the second satellite.

The Air Force in September declared the first GPS III satellite ready for launch and orbit next year — four years behind schedule, Raymond said.

The current GPS constellation remains "robust," he said.

"GPS III experienced numerous early programmatic challenges, particularly with payload development and delivery," Raymond said. "This is not acceptable, so we've taken numerous actions to insure the program is back on the right track."

The steps have included stronger program leadership, additional testing, and "improved contractor accountability" so "we are confident we have turned the corner as we have moved to full production," Raymond said.

**Lessons Learned** The lessons learned have been incorporated "as we get ready to conduct a competitive source selection," he said.

Ellen Mitchell, a spokeswoman for Harris, said the company "is fully dedicated to GPS III's success and is committed to improving execution and delivering on a reliable production cadence. We are working closely with Lockheed Martin and the Air Force to provide the world with the most advanced navigation payload capability ever developed."

Harris delivered three of the first 10 navigation payloads "which brings new capabilities to the GPS constellation, including robust signal generation and additional signals, with increased power and accuracy," she said.

Harris has made "significant changes" in personnel staffing and production processes, Woodbury said, adding that the subcontractor "still struggles to accurately project and meet delivery schedules," in part because of a shortage in special test equipment the company's trying to remedy.

Likewise, Lockheed "is expending significant effort to oversee Harris but results to date have been limited and not sufficiently sustained," he said.

By TONY CAPACCIO

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## Construction Contracts

### **Border Wall Bidders Plead for Trump's Help to Fend Off Opponents**

Construction companies worried about a backlash for working on President Donald Trump's proposed border wall are pushing for federal protections, including stopping cities and states from penalizing them, as a new battle erupts over his crackdown on illegal immigration.

The Associated General Contractors of America wants Attorney General Jeff Sessions to sue to prevent states and localities from denying contracts or divesting from companies that participate in wall construction. The group also wants assurances that local authorities will provide reasonable protection for workers and equipment on job sites, as well as contractor reimbursement for security costs or damage from vandalism.

Companies are struggling with whether to participate in the wall, even before Congress decides whether to satisfy Trump's demands to allocate funding. Trade groups representing construction and engineering firms said some companies declined to bid on the eight wall prototype sections completed in San Diego last month because they feared the political backlash or their preferred subcontractors wouldn't work on the project.

"This is not an attractive business decision, considering a lot of the opposition and the little support you're getting from the federal government," Jordan Howard, director of the Federal and Heavy Construction Division for the Associated General Contractors of America, said in a telephone interview.

**City Resolutions** Berkeley, Oakland, and Richmond, Calif., and Tucson, Ariz., have already passed resolutions to stop doing business with companies involved in building the wall or to divest from them, and the Oakland City Council is holding its initial vote Nov. 7 on whether to place the restriction into city law. Similar measures also have been proposed in eight states and 10 other municipalities including New York City, according to an association tally. It's creating a clash between communities that see the wall as antithetical to their values and companies trying to do legitimate business.

"Companies have a choice: help build the wall, a monument to racism and bigotry, or do business in New York City," said public advocate Letitia James in March. She has announced plans to have the city's Employee Retirement System study divesting from wall contractors and to introduce legislation preventing them from obtaining city contracts if there is wall funding. "We won't allow you to do both," said James, the second-highest ranking elected official in the city.

**Backlash Fears** The idea that qualified companies would take themselves out of the running for projects for fear of a backlash shortchanges the companies and the government, said Dave Raymond, president and chief executive of the American Council of Engineering Companies.

"We believe that our members should be able to participate in lawful federal contracting efforts without fear of reprisals," Raymond said by phone.

Raymond said his organization, which has more than 5,000 members, is focused on persuading officials from

states and localities not to take action against wall contractors, while the contractors' group is pushing the federal government to do more.

The Associated General Contractors of America, which represents more than 26,000 companies, sent a letter to Sessions in August saying it was "imperative" that the Justice Department sue to prevent states and localities from acting against wall contractors.

"Failure by the government to take action against such measures will embolden states and municipalities to discriminate against private companies that perform all sorts of controversial work for government, not just border-wall work," Michael Kennedy, the group's general counsel, wrote to Sessions in the letter, which was provided by the association.

The Justice Department declined to comment.

**Broad Authority** Actions to penalize companies are unconstitutional, the association argued, saying the law prohibits a state or municipality from discriminating against the federal government or those with whom it deals. The federal government also has broad authority to protect the borders that states and municipalities can't undermine, Kennedy said in his letter.

Charles Tiefer, a professor specializing in government contracting at the University of Baltimore School of Law, said the federal government typically can't take action without Congress or federal agencies first enacting legislation or contract provisions that prevent states and cities from moving against companies.

Contractors don't need federal intervention to protect their business interests, but that doesn't mean the Justice Department won't get involved, said Steven Schooner, a professor of government procurement law at George Washington University.

"It's impossible to predict what AG Sessions' Justice Department might or might not be willing to do, at the request of President Trump, to protect — or for that matter, raise the profile of — one of the president's favorite initiatives," Schooner said by email.

**Sanctuary Cities** The Justice Department has taken action already supporting Trump's priorities. In March, the attorney general announced a crackdown on sanctuary cities, threatening to pull Justice Department grants to local governments if they didn't share the immigration status of people held by police with federal authorities.

While Congress debates funding for wall construction, U.S. Customs and Border Protection solicited bids to build eight wall prototypes and awarded contracts to six private companies for mock-ups in San Diego that are each 30 feet long and up to 30 feet high.

Caddell Construction Co. of Montgomery, Ala.; W.G. Yates & Sons Construction Co. of Philadelphia, Miss.; Fisher Sand & Gravel Co. of Tempe, Ariz.; and Texas Sterling Construction Co. of Houston won contracts to build prototypes made of concrete, the agency has said. Caddell, W.G. Yates, KWR Construction Inc. of Sierra Vista, Ariz., and ELTA North America Inc. of Annapolis Junction, Md., won bids for four mock-ups made from materials other than concrete.

The agency hasn't released all the names of the companies that bid on the prototypes, just the winners. The companies that won didn't respond to messages or declined to comment, citing a confidentiality clause in their contracts.

But KWR said in September after winning its contract that it's a minority-owned company with many workers having long-standing relations or roots in Mexico — and that “all of us respect our Mexican neighbors.”

“If this fence is inevitable, it might as well be built well, and by us,” the company said in its release. “It should provide jobs to our workers who actually belong to these same border communities and care about the communities and the quality of construction here.”

By MARK NIQUETTE

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## Ethics

### **Puerto Rico Oversight Board Establishes Contract Review Policy**

The federal oversight board for Puerto Rico has established a policy, effective Nov. 6, in which the board must approve some contracts to assure they “promote market competition” and “are not inconsistent with the approved fiscal plan,” the board said in a document posted on its website.

The policy applies to contracts “with an aggregate expected value of \$10 million or more,” the document said.

Submissions to the board, according to the document, must include:

- Existing procurement policies.
- The request-for-proposals package issued.
- Documentation regarding the posting of the RFP.
- Internal independent cost estimate prepared as part of issuing the RFP.
- Evaluation criteria.
- Copies of the responses to RFP received.
- Copies of correspondence with bidders.
- Names of individuals who are part of the evaluation team(s).
- Signed certification that all applicable conflicts-of-interests laws, regulations, and policies have been complied with.
- A formal estimate of the impact that the contract will have on compliance with the certified fiscal plan.
- Proposed evaluation and scoring records.

By KATHERINE TAM

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## Homeland Security

### **That No-Bid Contract to Fix Puerto Rico's Grid Wasn't Only One**

While federal emergency managers have assailed Puerto Rico's no-bid contract to restore power, they are issuing noncompetitive awards themselves at the fastest rate in nearly a decade.

The Federal Emergency Management Agency awarded \$200 million in single-source contracts in the fiscal year that ended Sept. 30, the most since 2008, according to federal contracting data compiled by Bloomberg Government. It awarded nearly that much last month alone.

“FEMA seeks to maximize the use of competitively awarded contracts,” Jenny Burke, an agency spokeswoman, said by email, adding that the agency uses sole-source contracts “when necessary.”

In bypassing normal contracting procedures to fund food shipments, provide temporary housing, or restore communications in Puerto Rico, Florida, and Texas, FEMA adopted a similar no-bid approach that it criticized when Puerto Rico's electric utility awarded a \$300 million contract to a tiny Montana company to rebuild its grid.

While FEMA needs to get money spent to help those in need, no-bid contracts are worrisome, said Neil Gordon, an investigator at the Washington-based nonprofit Project on Government Oversight.

“Lack of competition in contracting is a recipe for trouble,” Gordon said in an interview. Bidding “acts as a natural check on contractor abuses.”

This year's total is set to soar past last year's: In just the first month of fiscal 2018, FEMA awarded \$189 million in noncompetitive contracts, the data show. The last time the agency awarded that level of single-source contracts in a month was 2005, right after Hurricane Katrina.

There are reasons why FEMA awards money without holding a competitive bid process. The agency can claim it's bypassing competition because of the urgency of the need, or because of a limited supply of the product or service it requires. FEMA can also skip the bidding process by awarding what are called “follow-on” orders, extending a contract that has already been awarded without holding a new bid.

Still, the agency's process for awarding money has drawn the attention of the Government Accountability Office, the congressional watchdog agency. “We are looking at FEMA contracting concerns in light of the recent hurricanes,” Marie Mak, director of the GAO's acquisition and sourcing management team, said in an email.

Critics on and off Puerto Rico have focused on the federal government's slow response following Hurricane Maria, which destroyed the electric grid, miles of roads, and thousands of homes. With much of the island still without electricity, lawmakers questioned the contract that Puerto Rico Electric Power Authority awarded to a Whitefish Energy Holdings LLC to restore power.

In awarding the contract, officials told Whitefish that the work would be paid for by FEMA. Puerto Rico canceled it Oct. 29 after the agency expressed concern about the contract. FEMA Administrator Brock Long



told a congressional hearing Oct. 31 that FEMA wasn't involved in the contract, and wouldn't have approved it.

But in one key respect, the Whitefish contract is similar to contracts that FEMA awards: It went outside the normal competitive bidding process.

Some of the money FEMA awarded through those noncompetitive contracts went to companies that are household names. Since August, Verizon Communications Inc. has gotten almost \$17 million in no-bid FEMA awards. Over that same period, AT&T Inc. got \$6 million in noncompetitive awards. Neither company responded to requests for comment.

The biggest contract was for Disaster Solutions Alliance LLC, which got a \$122 million award for providing food to hurricane survivors in Puerto Rico. Disaster Solutions is a joint venture between AECOM and a subsidiary of Canada's SNC-Lavalin Group Inc., according to AECOM spokesman Brian Leary.

Burke, the FEMA spokeswoman, said the Verizon and AT&T contracts were awarded "on a sole-source basis, when FEMA determines only one source is capable of performing the required work." Burke added that the Disaster Solutions contract "was a sole source follow-on to a prior contract, which Disaster Solutions won competitively."

In other cases, the type of work those companies are providing isn't clear. In September, FEMA awarded IBM Corp. a \$7.9 million, no-bid contract for work described by the government as including "operations and maintenance," "advising on architecture design," and "systems testing." A company spokesman didn't respond to a request to comment.

FEMA's noncompetitive awards also go to companies that are less well-known to the public. They include Marsh & McLennan Cos. Inc., whose subsidiary Guy Carpenter & Co LLC won an \$8 million, no-bid award from FEMA, for "broker support service" related to flood insurance.

"Guy Carpenter does not publicly comment on clients," said Laura Schooler, a company spokeswoman.

By CHRISTOPHER FLAVELLE AND PAUL MURPHY

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## Homeland Security

### **FEMA Didn't Know About Whitefish Contract, Agency Chief Says**

The head of the Federal Emergency Management Agency testified Oct. 31 that his agency didn't know about a \$300 million no-bid contract to rebuild Puerto Rico's electrical grid until after it was awarded, and likely wouldn't have approved it.

"We were notified several weeks after the fact" that Puerto Rico's power authority had an agreement with Whitefish Energy Holdings LLC, FEMA Administrator

Brock Long told members of the Senate Committee on Homeland Security and Governmental Affairs on Oct. 31. "There's no lawyer inside FEMA that would have ever agreed to the language that was in that contract."

Among other things, the contract included a provision that precluded an audit of the work that was done.

Meanwhile, Puerto Rico's federal oversight board said Oct. 31 that the island will need to seek approval for any contract over \$10 million, significantly expanding its supervision. The step came after widespread scrutiny of the Puerto Rico Electric Power Authority's contract with Whitefish, a Montana company that had two employees before Hurricane Maria struck. Puerto Rico officials canceled the contract Oct. 29.

Whitefish is based in the hometown of Interior Secretary Ryan Zinke, whose son worked for the company. Zinke said he played no role in the selection of Whitefish. Among Whitefish's financial backers are major donors to President Donald Trump.

The inspector general responsible for FEMA has sharply criticized the agency's oversight of grants, warning the committee in a June letter about FEMA's "continued failure to manage disaster relief funds adequately." Sen. Ron Johnson (R-Wis.), who leads the committee, said at the beginning of the Oct. 31 hearing that he was drafting legislation to address the concerns in that letter.

Long acknowledged that his agency still needs to improve its oversight, but distanced himself from Whitefish.

"We have a lot of work to do when it comes to training and ensuring the grant monitoring," Long said. "But in that case, that was not our contract."

Whitefish was selected Oct. 19 by PREPA to lead the rebuilding of the grid, with the expectation that the money would come from FEMA. The agency is reviewing the contract, as is the inspector general of FEMA's parent agency, the Department of Homeland Security.

The company, in a statement Oct. 29, said the cancellation will delay rebuilding of the power grid and said it stood by its work, particularly in remote areas accessible only by helicopter and heavy equipment. About 500,000 residents in San Juan will soon have power back because of Whitefish's work, it said.

"The original decision by PREPA to have Whitefish Energy come to the Puerto Rico only sped up the repairs, and if it were not for that action, crews would just now be getting to the island to begin the process of rebuilding the system and restoring power," the company said in the statement.

— With assistance from Michelle Kaske.

By CHRISTOPHER FLAVELLE

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## Appropriations

### Trump Seeks \$5.9 Billion Extra For Missile Defense, Afghanistan

President Donald Trump is asking Congress to appropriate an extra \$5.9 billion by year's end to strengthen missile defense and fund his plan to send more troops to Afghanistan.

In a request sent to Capitol Hill on Nov. 6, Trump asked for \$4.7 billion in "emergency" funding — not offset with cuts elsewhere — for missile defense, including \$700 million to repair two Navy warships. In addition, Trump asked for \$1.2 billion to support his strategy in Afghanistan, which would be Overseas Contingency Operations money.

All of this funding would be outside the scope of the regular discretionary spending caps.

Trump requested the funds during a multi-nation Asian tour where the threat posed by North Korea's nuclear ambitions is a focus of the president's talks with foreign leaders. The request also comes at the same time that the White House is negotiating with congressional leaders on a possible bipartisan deal to raise the Budget Control Act's spending caps to better fund defense and other programs this year.

In addition, Trump made another pitch for \$1.6 billion to start building the wall along the U.S.-Mexico border. That proposal is expected to also be a major issue in year-end talks over an omnibus spending package.

"That priority is reflected in both the enclosed [Department of Defense] budget amendments and the border wall request," Trump said in a Nov. 6 letter to Congress.

**Elements of Request** The request had long been anticipated on Capitol Hill after Trump announced plans to send more troops to Afghanistan. However, the scope of the request grew to reflect more recent threats by North Korea.

Lawmakers said it now is likely to be among the long list of items included in the year-end spending package. Other items expected to be included are a massive supplemental for disaster aid that lawmakers said Trump will request this month and possibly "emergency" funding for the president's plan to tackle the opioid health crisis.

The elements of the Trump budget amendment for the military are as follows:

- \$4.0 billion for "missile defeat and defense enhancements to counter the threat from North Korea";
- \$700 million to repair the USS John S. McCain and the USS Fitzgerald, which the White House said would boost critical naval presence and additional ballistic missile defense capabilities in the Asia-Pacific region; and
- \$1.2 billion in OCO funds for the administration's Afghanistan strategy calling for the deployment of an additional 3,500 troops.

White House Office of Management and Budget Director Mick Mulvaney urged Trump in a Nov. 3 letter outlining the plan that he should again request the border wall money, which was included in the president's fiscal 2018 budget request.

"The entire package will reflect your top priority of providing for the safety and security of the American people," Mulvaney said.

**Appropriators Praise Request** Key lawmakers signaled their support for the president's military plans while at the same time avoiding the matter of the border wall.

"It is essential that Congress provide our military with the resources they need to protect our nation and our allies around the globe, and to advance our missions — particularly in critical regions such as Afghanistan and the Korean peninsula," said House Appropriations Committee Chairman Rodney Frelinghuysen (R-N.J.). "We will carefully consider the budget amendment sent by the White House today. It is our goal to act quickly and appropriately to approve needed funding."

Similar comments were made by Senate Appropriations Committee Chairman Thad Cochran (R-Miss.), who said he wants Congress to act "expeditiously" on the request.

"The president's request demonstrates that missile defense and military readiness remain a high priority for the president and our military and diplomatic leaders. Providing additional funding for missile defense programs would reinforce the United States' commitment to defend itself and its allies," Cochran said.

By NANCY OGNANOVICH

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## GSA

### Oversight Democrats Sue Agency Overseeing Trump Hotel Lease

Democrats on House Oversight Committee are suing the head of the government agency that oversees the lease for Trump International Hotel in Washington for allegedly refusing to hand over documents sought by lawmakers, according to a copy of the complaint.

Seventeen lawmakers filed suit in federal court against the General Services Administration's acting administrator, Timothy Horne.

Democrats seek monthly financial reports the hotel is required to file with the GSA, records of payments from hotel's foreign clients, and details on how the agency came to allow Trump Organization to retain its deal after Donald Trump became president.

By HOLLY ROSENKRANTZ AND BEN BRODY

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## Acquisition

### Pentagon Busy Mulling Breakup Of Acquisition Role, Official Says

Top Pentagon officials have been busy over the past several months figuring out exactly how the Defense Department should restructure its new acquisition leadership responsibilities, per the congressional mandate that it do so by early next year, DOD's cost analysis director said Nov. 1 at a Falls Church, Va., industry conference.

All eyes are fixed on the Feb. 1 deadline to break up DOD's acquisition management structure, said Robert Daigle, director of the department's Cost Assessment and Program Evaluation (CAPE) office.

Two new positions are being created — a new undersecretary for research and engineering (R&E), and an undersecretary for acquisition and sustainment (A&S) — by splitting what is the acquisition, technology, and logistics (AT&L) undersecretary position. The positions, mandated in the fiscal 2017 National Defense Authorization Act, will become effective Feb. 1.

"There's a lot of effort going on right now to try to figure out what that breakup looks like," Daigle said. "What are the roles and responsibilities of those new organizations? What sets of authorities will those two new organizations rely upon as they go about doing their business?"

**New Acquisition Structure** "Congress over the last few years has really put in place a lot of new flexibilities in the acquisition system around prototyping and experimentation and those kinds of things," Daigle said at the 2017 Vision Federal Market Forecast conference, an annual event presented by the Professional Services Council. "And so there's a question of whether or not the undersecretary of defense for R&E takes those new authorities and runs with them.

"There's a lot of really good thought going on around the department" in this area, said Daigle, who noted that he's sat through several meetings on the topic.

Ellen Lord, the current AT&L undersecretary, is expected to take the A&S position after the transition. At the same time, President Donald Trump on Oct. 27 announced his intent to nominate former NASA Administrator Michael Griffin to become Lord's deputy undersecretary. After Feb. 1, Griffin is expected to transfer into the R&E post.

The pair may need to be reconfirmed into those new positions, though a Senate Armed Services Committee staffer recently told Bloomberg Government that the transition process hasn't yet been solidified.

Daigle told Bloomberg Government he was reluctant to provide further details, in part because he didn't want to speak in Lord's place.

**'Not an Optimal Way'** Daigle noted his predicament at CAPE in having to prepare for a number of separate budgetary scenarios, given that DOD's fiscal 2018 budget has yet to be finalized by Congress.

"We build a budget based on the actual base we have. We build a budget built on base plus base-[Overseas Contingency Operations], and then we build a budget based on what we think the department really needs," Daigle said.

"At some point, the political process gives us an answer, and then we balance," he said. "That is not an optimal way to do business. It would be much better for the Department of Defense — it would be much better for industry — if we could stabilize that process and build one set of numbers, but in the intervening period, we'll do the best we can."

By SAM SKOLNIK

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## DOD

### Pentagon Discloses New Quality Glitch on Lockheed's F-35 Jets

The Pentagon's F-35 program office is weighing how to fix to a newly discovered glitch in the fighter — the military's most expensive program — that halted deliveries of the Lockheed Martin Corp. plane for 30 days.

The problem was linked to a primer that's supposed to be applied as a protective layer on aluminum fasteners to prevent corrosion. The Defense Department temporarily stopped deliveries of the next-generation jet for the month ending Oct. 20 to assess the issue.

"After a thorough government and industry investigation, it was discovered that Lockheed Martin had not applied the required primer in fastener holes on F-35 substructures during the aircraft production process," Pentagon spokesman Joe DellaVedova said in an email. "This is a production quality escape issue and, though it needs to be corrected to prevent potential future corrosion, it does not pose a safety of flight risk to the F-35 fleet or affect current operations."

Discovery of the flaw came after the Pentagon already has taken delivery of about 250 F-35s to date and plans to accelerate production to include a block purchase by U.S. allies of as many as 211 jets starting with the 12th production lot.

**A Lockheed Meeting** The fastener glitch has been flagged to Pentagon officials preparing Ellen Lord, the undersecretary for acquisition, technology, and logistics, for a Nov. 6 meeting with top Lockheed officials, including CEO Marillyn Hewson, according to an official who asked not to be identified because the meeting hadn't been publicly announced.

Lord will be reviewing all major Lockheed programs, including the F-35, with company representatives, according to the official. Lockheed spokeswoman Maureen Schumann declined to comment when asked about the meeting.

Upkeep of the F-35 fleet will become more challenging as the Pentagon prepares for what the manager of the program has called a "tsunami" of new production toward an eventual planned U.S. fleet of 2,456 planes plus more than 700 additional planes to be sold to allies. The fastener example is another instance of the potential maintenance burden on the program.

"We are taking a holistic fleet-wide approach to plan and implement corrective action on aircraft in production and fielded jets, which allowed deliveries to resume," Lockheed spokeswoman Carolyn Nelson said in

an email. "We continue to be on track to meet our delivery goal of 66 F-35s by the end of 2017 and have delivered 54 aircraft year-to-date."

The disclosure also comes a week after Deputy Defense Secretary Pat Shanahan, Navy Secretary Richard Spencer, and Air Force Secretary Heather Wilson visited the Lockheed facility in Fort Worth, Texas. It's not known whether they were informed of the glitch.

"The F-35 Joint Program Office is leading the effort with the U.S. services, international allies and Lockheed Martin on a comprehensive engineering assessment and corrective action maintenance plan to implement the necessary repairs" to all deployed aircraft "while minimizing impact to operations," DellaVedova said.

In the interim, "primer will be applied to fastener holes of fielded aircraft as panels are removed during routine F-35 maintenance operations," he said. "Lockheed Martin has taken action to correct the production line work order error to ensure primer is applied to all fastener holes on future aircraft."

By TONY CAPACCIO

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## SBA

### Backlash to SBA Regulatory Research Contract Is Growing

Critics are raising significant concerns about the award of a federal contract to study regulatory costs to two researchers whose previous work has been widely criticized.

The Small Business Administration's Office of Advocacy on Sept. 21 awarded researchers W. Mark Crain and Nicole V. Crain a contract worth \$136,250 to conduct a study on the disproportionate cost impact of regulations on small businesses, due in December 2018.

"We designed a new study, and offerors were evaluated on their ability to perform this study," Patrick Delehanty, acting director of economic research at SBA's Office of Advocacy, told Bloomberg Government in an email.

"The process for evaluating proposals is established by SBA contracting guidelines and the Federal Acquisition Regulation," Delehanty said. "We evaluated the proposals according to that process."

**Cancel the Contract** The choice of Jupiter, Fla.-based Interaction Analytics, which employs only the Crains, to conduct the study raises red flags because of their two previous, highly controversial reports: one in 2010 for the Office of Advocacy and a similar one in 2014 for the National Association of Manufacturers.

In the solicitation notification for the contract, the SBA stated that "past performance" would be one of the factors considered in making the award, including previous experience in researching the topic.

"SBA cannot credibly claim that this is a different study," said Amit Narang, regulatory policy advocate at

Public Citizen. "It is virtually identical to the methodology used for the Crains' deeply flawed report for NAM."

The suspicion now is that SBA picked the Crains because they knew these researchers would produce the "alternative facts" that SBA wants, Narang said.

"SBA must cancel this contract immediately and the SBA's inspector general needs to get to the bottom of whether this contract was improperly awarded," Narang said.

**Business Council Skeptical** Only two firms responded to the SBA's request for proposal, said David Levine, CEO and co-founder of the American Sustainable Business Council, which believes that economic development is compatible with sound regulation.

"It is hard to believe that there are only two firms in the entire academic community who can perform this research," Levine said.

Established in 2009, the ASBC represents a network of more than 250,000 businesses, including many small businesses, that have committed themselves to the "triple bottom line" of people, planet, and profit, according to Levine and the organization's website.

The Office of Advocacy is not required to award the contract if it is not satisfied with the proposals or qualifications of the respondents, Levine said. Instead, the SBA should start over and do a better job of reaching out to qualified entities, he said.

**Controlled Process** In the past few years, there has been little communication between the Office of Advocacy and the ASBC, and no outreach, Levine said.

"Clearly we've got some more work to do to try and push this open," he said.

Levine said he was introduced to the Office of Advocacy many years ago, but what he found was an office "chock-full of lobbyists" representing the larger trade associations and companies, not small business leaders.

"Certainly none of the folks that were in our world," Levine said. "Or any of the allies or any of the other organizations that we have worked with, other than those that would tout the general political line of 'regulations are bad for business, period.'"

"So, we saw a very controlled process," Levine said.

By CHERYL BOLEN

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## Competition

### Defense Intel Agency Triples Service Contract to \$18 Billion

The Defense Intelligence Agency will more than triple the ceiling value — to an eye-popping \$18 billion — for Solutions for Intelligence Analysis 3, a recompe of a contract that's a primary source of professional, scientific, and technical services to intelligence agencies.

The tripling of the previous contract vehicle's \$5.7 billion ceiling reflects the potential for a much higher annual workload, because the planned period of perfor-

mance of SIA 3 will only double to 10 years from five years on SIA 2.

The expansion of SIA 3 will be a boon to the vendors already closely working with intelligence agencies. DIA plans to keep the number of award recipients, 12, about the same as the agency transitions to the next-generation SIA 3.

The agency is planning to release a request for proposal Feb. 18, 2018, and award contracts by July 16, 2018, according to industry day slides released Oct. 30.

DIA has issued 42 task orders on the incumbent contracts under the SIA 2 program, according to the slides. No spending amounts are available for each contract because intelligence agencies don't report classified task-order awards and are exempt from reporting obligations on those orders.

In addition to increasing the ceiling value and the period of performance, SIA 3 expands the slots for small businesses from three to six.

**BGOV's Take** DIA seems to be bucking a trend in which multiple-award contract recompetes expand the number of prime contractors. That precedent was set in July 2015, when DIA's other big information technology MAC, known as E-SITE, made 25 large-business and 25 small-business awards. E-SITE's predecessor, Solutions for the Information Technology Enterprise (SITE) made 11 awards, while 50 awards were issued for the E-SITE follow-on.

DIA's decision to maintain about the same number of contract awards probably suggests that many of the largest incumbent contractors such as Booz Allen Hamilton, CACI International, Lockheed Martin, Science Applications International Corp., and others who have been working with the intelligence community, will continue to win most of the orders on SIA 3.

As a result, this mega-MAC will be an important vehicle for many of the largest professional services providers. Competition for the six small-business slots will be intense, and small businesses with previous intelligence experience are likely to have an advantage.

By DANIEL SNYDER

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## Army

### **Army's LOGCAP V Contract Hits RFP Release Delay**

A final request for proposals for the Army's LOGCAP V contract has been delayed, according to a Nov. 1 notice issued by the agency. The Army provided no updated timetable or reason for the delay.

Like its predecessors, the Logistics Civil Augmentation Program, or LOGCAP V, contract will be used to buy services such as logistics and engineering during wartime operations, humanitarian assistance, and di-

saster relief. The LOGCAP IV contracts have generated \$21 billion since fiscal 2007 for Fluor Corp. (\$11.6 billion), DynCorp International Inc. (\$7.3 billion), and KBR Inc. (\$2.3 billion).

The Army has set a lofty estimated ceiling value — \$82 billion — which is probably an overestimate of the obligations that will flow through the LOGCAP V contract. LOGCAP's market dynamics in the past four fiscal years indicate that \$10 billion, or \$1 billion per year, is probably a more likely estimate of obligations that will flow through LOGCAP V.

The final RFP for the 10-year, multiple-award contract had been due on or about Nov. 6, Bloomberg Government reported. That was more than a six-month delay beyond U.S. Army Contracting Command's original RFP release date of April 2017.

By DAN ENNIS

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## DOD

### **Defense Authorization Bill Likely To Exceed Caps, McCain Says**

The final fiscal 2018 defense authorization bill will certainly exceed caps in law even if Congress doesn't strike a new budget deal, Senate Armed Services Committee Chairman John McCain (R-Ariz.) told reporters.

The top-line national security number could be the Senate-authorized level of \$640 billion for regular national security spending subject to caps and excluding war spending, he said.

The Senate authorized \$60 billion in war funds not subject to caps for a total of \$700 billion.

McCain warned, however, that negotiations are still in progress.

By ROXANA TIRON

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## Army

### **Raytheon Wins \$2.87 Billion Army Contract For Live, Virtual, Constructive Training**

Raytheon Co. was awarded an Army contract valued at up to \$2.87 billion to provide "support and services for training aids, devices, simulators and simulations" for "live, virtual, and constructive training domains," the Defense Department announced.

The contract is set to run through October 2019, according to the Defense Department.

By BLOOMBERG NEWS

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## Army

### SAIC Gets \$980 Million Army 'Battlefield Systems' Contract

Science Applications International Corp. has been awarded an Army contract worth up to \$980 million under the General Services Administration's One Acquisition Solution for Integrated Services.

The contractor is set to help field new technologies to war fighters, and to provide systems engineering and computer resource engineering services to the Army's Software Engineering Directorate; the Aviation and Missile Research, Development, and Engineering Center; and the Army Research, Development and Engineering Command.

The contract has a one-year period of performance and two one-year options.

Work will be performed at Redstone Arsenal, Ala.

By DAMON KOVELSKY

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## Regulatory Policy

### Trump Inaccurately Claims Most Regulatory Cuts of Any President

President Donald Trump is on track to cut more regulation — and to dramatically slow the growth of new regulation — than any president in modern history, but he hasn't done so already.

Yet, on more than one occasion, Trump has boasted his administration has made more cuts in regulations than have actually been made.

"In the history of our country, no president, during their entire term, has cut more regulations than we've cut," Trump told Republican lawmakers at the White House on Nov. 2. "We've cut that in 10 months, and we have a lot more to do."

Because of the lengthy legal process that must be followed before eliminating a rule in whole or in part, the number of rules actually cut by the Trump administration is still relatively small, or under 30, according to most trackers.

By comparison, the retrospective review initiative conducted during the Obama administration resulted in 70 rules eliminated in whole or in part over a five-year period, for a cost savings of \$37 billion.

**Tracking Deregulation** Since the start of the Trump administration, federal agencies have been working to identify regulations that can be modified or eliminated to save costs, to meet the requirements of Executive Order 13,771.

Under this executive order, agencies must eliminate two existing rules for every new rule they issue. At the end of fiscal 2017, OMB officials said 10 rules had been cut by agencies, but that final numbers were still coming in.

Dan Goldbeck, research analyst for regulatory policy at the American Action Forum, has tracked 11 rules that have been modified or eliminated by agencies that have produced cost savings, including two that have been finalized since the end of the fiscal year.

In addition, there have been to date 15 rules repealed under the Congressional Review Act and signed by the president, for a total of 26 rules cut by Goldbeck's measure.

**Brookings New Tracker** Researchers at the Brookings Institution have launched a new project to track deregulation in the Trump administration, which provides a nuanced look at the rules being cut.

In addition to the 15 rules repealed under the CRA, Brookings found four rules that have been rescinded or withdrawn, four rules that have been partially eliminated, and nine rules that have been delayed.

The Brookings tracker, however, isn't comprehensive and so it can't be used to determine a percentage of rules that have been cut, said Philip Wallach, senior fellow in governance studies at Brookings.

"We think that those questions are just really hard to get at," Wallach told Bloomberg Government.

**Still Early Stages** Instead, the Brookings tracker is trying to get at the big question of whether the administration is doing a lot of high-saliency deregulating successfully, Wallach said.

The tracker includes the progress of rules through procedural stages, including litigation at the end, Wallach said. The most sensible way to think about where the administration is now is that it is still pretty early going, he said.

The president has set an ambitious agenda for doing a lot of deregulating, but marching through all the stages is a long haul, Wallach said.

**Specific Percentage Difficult** While it is natural to look for a statistic that exactly summarizes what has happened, it is really hard to figure out what to pull in under the umbrella of deregulation, Wallach said.

Trump recently commented that "we've probably cut out about 48 percent, and we're going to be quite a bit higher than that."

More precisely, the Office of Management and Budget has said the number of economically significant regulations proposed by agencies in the spring regulatory agenda had dropped by about 50 percent since the fall.

"Probably it's not sensible to hope for one big summary statistic eventually," Wallach said. "I'm not sure even if you're a really careful person you're going to be able to design such a measure very convincingly."

By CHERYL BOLEN

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## Weapons

### Nuclear Options: Changes to Nuke Budget Could Hit Contractors

The Pentagon, which is still using 1970s-era technology to control its nuclear arsenal, plans to spend about \$1.2 trillion, or about \$40 billion annually, to upgrade and maintain nuclear weapons from fiscal 2017 through fiscal 2046, according to a report from the Congressional Budget Office. But funding all of these plans could prove difficult. Other priorities and constraints on defense spending may force delays or cutbacks putting millions of dollars in future defense contracts at risk.

**Bombers and Missiles and Subs and More** The CBO estimates that, of the \$1.2 trillion, \$772 billion “would be allocated for the operation, sustainment, and modernization of strategic nuclear delivery systems and weapons,” which include the nation’s planned arsenal of 450 intercontinental ballistic missiles, 12 ballistic missile submarines, and 120 nuclear bombers.

Of these systems, the most expensive component over the 30-year period will be \$313 billion for the submarines. The Navy plans to replace its current inventory of Ohio-class submarines with the new Columbia class, scheduled to enter service in October 2030. The current estimated acquisition cost of the submarines, which does not include their operating costs, is \$127 billion. The prime contractor for the new submarines is General Dynamics Corp.

In addition to the big strategic delivery systems, U.S. plans call for \$25 billion on tactical nuclear delivery systems, \$261 billion for laboratories and supporting activities, and \$184 billion for command, control, communications, and early-warning systems.

Much of the spending for the laboratories and supporting activities falls under the budget of the Department of Energy’s National Nuclear Security Administration. In its fiscal 2018 budget request, the Trump administration requested nearly \$14 billion for the NNSA, the largest component of the overall DOE budget request of \$28 billion. In fiscal 2017, the NNSA spent \$12.8 billion on contracts, the largest of which was for the operation of Sandia National Laboratories and was awarded to Honeywell International Inc. in December 2016.

**Show Me the Money** “Pursuing nuclear modernization will be challenging in the current environment,” according to the CBO. Defense budgets through fiscal 2021 will be constrained by the defense spending caps in the Budget Control Act and subsequent agreements, unless changes are made to that law. Nuclear modernization will also have to compete with other defense priorities, such as building more ships for the Navy, adding more planes to the Air Force, or increasing the size of the Army.

The CBO’s report offers policy makers a variety of cost-saving options that would reduce or at least spread out some of the costs.

CBO’s nine options fall into three general categories. One option would simply delay modernization plans without reducing overall force structure. Five options would change the force structure but keep the overall numbers of weapons allowed by the New Strategic

Arms Reduction Treaty constant at 1,550. Three options would reduce the force structure to 1,000 weapons.

Adopting some of the various options could have a major impact on various defense contractors. For example, delaying the replacement of Minuteman III ICBMs with the new Ground Based Strategic Deterrent could postpone about \$18 billion in projected spending for the development of the new missiles and follow-on acquisition costs. Right now, Boeing Co. and Northrop Grumman Corp. are competing for the contract to build the new missile. Boeing has been awarded \$349.2 million for preliminary work, and Northrop has received \$328.6 million. Other options offered by the CBO include eliminating the ICBM leg of the U.S.’s nuclear triad altogether.

It also suggests that the bomber leg of the triad could be eliminated. Northrop holds the contract to develop and ultimately build the new B-21 Raiders, and for fiscal 2018, the Air Force is requesting about \$2 billion for the program. The Air Force plans to build about 100 of the bombers at a cost of about \$564 million each in 2016 dollars. Cancellation of this program could mean that Northrop would lose tens of billions in future sales.

**No Changes Imminent** Neither the Trump administration nor Congress appears to be considering major changes to the nuclear force structure. However, current nuclear plans extend well into the future, and if the nation’s fiscal picture doesn’t improve, pressure for nuclear reductions is likely to grow.

The fiscal 2018 budget request allocates only about 2.3 percent of the planned defense budget to Strategic Forces, which includes the nuclear arsenal, but this figure does not include all of the research and development costs, the DOE costs, and many other costs for systems that support both conventional and nuclear missions.

Many of the decisions about nuclear force structure involve treaty obligations, so the ups and downs of the U.S. relationship with Russia could affect the debate. Improving relations could lead to new agreements to further reduce existing arsenals, while conversely, a worsening relationship would provide support for those who want to sustain and modernize the current arsenal. At some point, the Chinese nuclear arsenal may also factor into the discussion.

Any shifts in the planned number and mix of delivery systems or warheads could lead to major reductions in revenues for those who build the delivery systems as well as those whose contracts support the nuclear laboratories run by the Department of Energy and other nuclear infrastructure costs.

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## Army

### **Spider Men? Army Hires Worms To Make Arachnid Silk Soldier Suits**

The Army is turning to the lowly silkworm to protect troops with clothing made from spiderwebs that are tougher than steel and lighter than Kevlar.

Kraig Biocraft Laboratories Inc. of Ann Arbor, Mich., won a \$500,000 contract to develop spider silk for Army uniforms and protective equipment using “entirely new genetically enhanced silkworm strains,” it said in a statement.

The company implants genes from web-spinning spiders into silkworms that produce commercial-grade silk. Pound for pound, spider silk is both lighter and stronger than Kevlar and steel, materials typically used to make protective clothing for troops, and much stronger than the spandex that makes up most of Spider-Man’s costume in the Marvel comics.

The Army wants to cut the weight of equipment that soldiers must carry. In addition to less cumbersome uniforms, it’s also seeking wearable battery packs that can be recharged in the field, and a lighter machine gun that’s more accurate than the M249 Squad Automatic Weapon now in use.

The award to Kraig is part of a broad agency announcement put out by PEO Soldier in 2015 under the Soldier Protection and Individual Equipment program to advance technologies in personal protective equipment categories. This BAA expires in July 2018.

“From a once impossible idea, we have now built the most efficient and effective spider silk production system on Earth,” the company said in a statement to shareholders posted on its website.

The Army contract “increases our opportunities for commercialization in 2018 and has compelled, and motivated, us to take the significant step of moving much of our molecular biology in-house and establishing our own laboratory,” it said.

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## Army

### **Army FOIA Release May Help Vendors Preparing for Competition**

The Army on Oct. 23 released a redacted version of Vectrus Inc.’s solicitation, offer, and award for its Operations, Maintenance, and Defense of Army Communications in Southwest Asia and Central Asia contract. The preemptive Freedom of Information Act release will put competitors on a more equal footing and may suggest that a request for proposals isn’t far off.

Vectrus Inc. has generated \$843.7 million since May 2013 on the five-year predecessor contract to fulfill

communications requirements. The Army has released two separate re-compete solicitations, in March and June. It released the Vectrus contract because the documents “have become or are likely to become the subject of subsequent requests,” according to the Army’s notice.

Spending on the current Vectrus contract has already reached its ceiling value, despite the fact that six months remain until its scheduled end date in May 2018. That disparity may suggest that the Army is satisfied with the services being delivered and could extend the contract through a bridge. The potential continuation of work could make unseating the incumbent difficult when the contract is re-competed, but the FOIA release may make it easier for those planning to submit proposals.

Much of the more-than-500-page document is redacted, including costs, but competitors may be able to glean something from it, including information about the supplies and services provided.

The FOIA release also probably indicates that an RFP will follow as the office prepares for the acquisition.

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## DOD

### **C5 Consortium Wants Ideas on How To Jam Frequency-Hopping Drones**

The Pentagon is using its Other Transaction Authority to compete an opportunity that turns Navy’s electronic jammer, designed to defeat radio-triggered improvised explosive devices, into a tool to defeat frequency-hopping aerial drones. The Defense Department, through the Command, Control, and Communications in Cyberspace (C5) Consortium, has requested white papers outlining proposals.

The goal is to: “detect, identify, and defeat frequency-hopping patterns via machine-learning algorithms, without the need to establish or use predefined waveforms or libraries,” according to the agency announcement.

Unmanned aerial vehicles are usually guided by radio signals. Jamming those signals is relatively easy if they use a single frequency and even easier if all drones set up by an organization use the same channel. Frequency hopping isn’t new; it was only a matter of time before it was used for controlling drones — even by non-state actors. That’s what’s driving the C5 search for concepts.

Northrop Grumman Corp., the builder of Navy’s existing system, Joint Counter Radio Controlled Improvised Explosive Device (RCIED) Electronic Warfare or JCREW, signed a contract potentially worth \$442 million to shift from low-rate to full-rate production in July.

Northrop Grumman, also a C5 member, describes JCREW systems as “software-programmable jammers that provide protection from device-triggered impro-



vised explosive devices. JCREW is already in use against unmanned aerial systems. The C5 goal is to enhance that capability to take on more sophisticated drones.

White papers will be sent to the Pentagon after review by C5. The Defense Department will then, depending on requirements and funding, make awards of prototype projects.

C5 members can submit proposals on their own or collaborate via a team, but at least one nontraditional defense contractor or small business must be part of any team.

**What's a Consortium?** C5, the most popular consortium governmentwide, is made up of more than 700 companies and institutions that includes larger firms such as Calibre Systems Inc. and Leidos Inc., and scores of smaller firms including Bloomberg Government. The consortium represents a group of companies interested in working within a given subject area that come together under an agreement approved by DOD to take advantage of Other Transaction Authority.

"Other transactions" are congressionally approved arrangements to do business without all the normal regulatory hurdles associated with federal contracting. OTAs are "legally binding instruments that may be used to engage industry and academia for a broad range of research and prototyping activities" instead of conventional contracts, grants, or cooperative agreements.

The consortium idea originated with the Army's Contracting Command; there are now multiple consortia.

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## NASA

### **NASA Seeks Industry Partners For Airspace Drone Integration**

NASA is leading a project to integrate autonomous aircraft into U.S. airspace, with a lofty goal to achieve that mission by 2025.

The Unmanned Aircraft Systems Integration in the National Airspace System project, or UAS in the NAS, will develop capabilities for reducing technical safety and operational challenges associated with enabling routine drone access to U.S. airspace, according to NASA.

NASA has released a request for information asking for industry help to demonstrate how UAS would integrate and operate within the national airspace. Information packages in response to the RFI are due by Dec. 15.

To help communicate the agency's expectations and the role that NASA will play, the UAS-NAS Project is holding an industry day Nov. 30. Those interested in sharing thoughts on relevant emerging technologies must register by Nov. 20. The event is likely to include

logistic details about the U.S.-run airspace, navigation facilities, and airports. The event will also provide technical details about how the UAS-NAS project would incorporate autonomous drones by 2025 in the civil environment to aid in agricultural, transportation, surveillance, and other operations, according to the Integration Efforts RFI package.

NASA's immediate project priorities will be to collaborate with industry on the Systems Integration and Operationalization (SIO) demonstration, which is planned for the summer of 2020. Potential partners may include:

- UAS vehicle original equipment manufacturers (OEMs).
- Personal aircraft vehicle manufacturers.
- UAS avionics and middleware industry representatives.
- UAS operators.
- Sensor manufacturers.
- Communication/navigation/surveillance providers.
- Federal Aviation Administration UAS test sites.
- Ground station system developers.

The RFI lists two main technical challenges that have to be met in the SIO demonstration: detect and avoid, and command and control. But the project seeks to advance the overall technologies necessary to fully and successfully implement UAS into national airspace.

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## NASA

### **NASA Cuts the Fat to Modernize Computing Services With NEST**

NASA is taking advantage of the transition from its current decades-old end-user hardware and software contract to modernize its computing services.

The new NASA End-user Services and Technologies (NEST) is seen as a "transformational contract," according to the Oct. 30 announcement. The agency is moving from its seat-based, "thick client" (or "fat client") model — where a personal computer performs the bulk of processing in an application — to a modernized, more flexible, "thin client" — in which the bulk of the data processing is done on a network server.

NASA is preparing to release a draft request for proposals around Nov. 22 in search of a vendor to help the agency catch up to state-of-the-art technologies and take advantage of future innovations and shifts in the industry. A final request for proposals is anticipated around Jan. 29, 2018.

The agency is especially looking to update its computer services into a device-agnostic (designed to be compatible across most common systems), mobile-friendly environment that includes cloud-based resources.

The draft performance work statement lists the basic types of services required, such as providing personal computing hardware and software, mobile IT services, printers and other peripherals, help-desk support, and infrastructure support. But NASA is looking for a vendor that will ensure the agency doesn't get stuck in another tech rut. To that end, it seeks developing "transformative roadmaps" that enable "secure smart innovations, infrastructure, and integration" such as virtual technologies.

NASA has already started the transformation by implementing Microsoft Office 365 and has created two new pilot programs: enterprise file sync and share (EFSS) and another working on virtualization solutions. Ultimately, NASA wants to use a secure edge-computing model — which processes data at the edge of the network at a remote site instead of the cloud.

An industry day is planned for Dec. 6. Prospective attendees can register by Dec. 1 and visit the NEST website for more information.

NEST is a recompetes of the Agency Consolidated End-user Services (ACES) held by Enterprise Services LLC, a subsidiary of DXC Technology Co. The 11-year contract has a \$2.5 billion ceiling but has had only \$664 million in obligations since its start in 2010.

NASA's End User Services IT budget program has a \$150 million budget for fiscal 2018, with the majority — \$141.9 million — going to operations and management spending.

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## HHS

### **Prepare Now for \$500 Million NIH Small-Business Recompetes**

Small businesses should start preparing for the National Institutes of Health's recompetes of a contract providing communications support.

Public Information and Communication Services, or PICS II, is a professional services contract in which NIH and other Health and Human Services Department agencies can purchase communications and social marketing services, such as:

- Communications media research, outreach, and analysis.
- Editorial and design, development, and distribution support.
- Graphic and web design, and database support.
- Exhibit and display design and meeting support.

NIH hasn't released a presolicitation, but there are resources to help interested small vendors get up to speed and prepare bids, including a website for PICS with a list of its services and the original statement of work. The original request for proposals, which is likely to be similar to the recompetes, contains a detailed breakdown for each labor category.

The recompetes was announced in September, along with an extension on the original contract, through March 6, 2018. The extension gives agencies more time to place task orders and spend more of its \$500 million ceiling, and it gives NIH more time to ready the follow-on.

The 25 PICS incumbents have generated \$70 million in obligations since 2012, according to data compiled by Bloomberg Government. Scientific Consulting Group Inc. has won \$24 million, followed by Palladian Partners Inc. (\$17 million), and IQ Solutions Inc. (\$12 million).

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## Information Technology

### **Defense Agency to Hold Industry Day For Mobile Access to Secret Network**

The Defense Information Systems Agency's Mobility Program Management Office announced Oct. 30 that it will hold an industry day Nov. 16. The office will present the Defense Mobility Classified Capability (DMCC) program and information about the Mobility Enterprise Services-Classified (MES-C) acquisition.

The industry day announcement follows DISA's March request for information for MES-C. The anticipated period of performance is two years plus three option years.

The general capabilities DISA sought in the RFI are consistent with those described in the industry day announcement. The Mobility PMO is looking for an open platform, end-to-end mobility enterprise services capability for secret and top-secret information, and it must be compliant with the government's Commercial Solutions for Classified program.

The platform will be able to support the DMCC's current capabilities, including information assurance, system monitoring and reporting, Tier III service support, and commercial mobile devices.

**What's Ahead** The office released a version of the solicitation for unclassified mobility in December 2016. The response to the request for information was due in July and, although there hasn't been a request for proposals, the RFI and question-and-answer documents could help prepare interested vendors for the classified competition.

The classified and unclassified mobility acquisitions are new requirements.

While waiting for MES-C, DISA issued a \$13.1 million follow-on contract to Apriva ISS LLC to continue its support for the Secure Mobile Device Gateway, for which it has a proprietary design. SMDG operations have shifted to the Global Information Grid Services Management Operations (GSM-O) contract with Leidos Inc. MES-C requires an open-source system, according to the award justification, which also provides a detailed description of the acquisition plan.

The Defense Department in fiscal 2017 included \$34 million for DOD Mobility in its information technology program submission. It's likely that the investment will be similar in fiscal 2018, and would fund both the classified and unclassified versions.

Attendees must register for the industry day and submit any questions by Nov. 13.

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## Information Technology

### **Defense Agency Consolidates IT Infrastructure Support Contracts**

The Defense Information Systems Agency (DISA) is seeking Historically Underutilized Business Zone or other small businesses to provide engineering support for its information technology infrastructure and networks. The agency is combining two current task orders into a new single-award contract that may be worth as much as \$160.1 million.

DISA's Cyber Security Analytics/NetOps Division (ID6) needs a contractor to help with the design, integration and testing of the Joint Information Environment (JIE) Enterprise Operational Support Systems (OSS) — which consolidates and provides security for the Defense Department's IT infrastructure and all Cyber Network Operations (CyberNetOps) components. The CyberNetOps Develop Deploy Support (CNODDS) contract will also provide automated operations, administration, maintenance, and troubleshooting of DISA systems.

The Oct. 31 sources-sought notice doesn't provide much detail about a formal solicitation, though the new single-award contract is expected to start by fiscal 2019. Incumbent NES Associates LLC, a subsidiary of CSRA Inc., has made \$23.3 million so far on its \$60.8 million task order ending in November 2018, and Federal Acquisition Services Alliant Joint Venture LLC has made \$26.3 million on its \$99.5 million order that ends in October 2020. Combined, they're worth almost \$160.3 million.

The sources-sought notice offers interested vendors a basic idea of the new contract's requirements, including:

- Quickly provide personnel for surge support, which could last for six months to a year and may become a full-time effort.

- Upgrade existing CyberNetOps solutions and deploy new features for existing capabilities.

- Provide certain system improvements and new capabilities that include DevOps or DevSecOps, an agile approach to software development that includes development, security, and information technology operations.

- Create a service assurance framework and comprehensive model of DISA's NetOps tools.

These and more requirements must be covered in a five-page capabilities statement due Nov. 8.

DISA has spent \$6.7 billion on IT and telecom services, with a little more than \$2 billion going to small businesses, since fiscal 2014, according to data compiled by Bloomberg Government.

DISA also has 108 open related opportunities and 318 contracts and task orders that are expiring within 12 months.

DISA is mentioned in 14 IT programs in the fiscal 2018 budget request. The Joint Information Environment is mentioned in two IT budget accounts — Joint Staff Information Technology Management and DOD CIO Programs — both of which sought multimillion-dollar funding increases for fiscal 2018.

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## DOD

### **Pentagon Seeks Industry Help For Live/Virtual Training Simulator**

The Pentagon wants to create a new kind of battle-field simulator that combines live and synthetic elements to test new and emerging capabilities, and is seeking industry input.

The Army's Program Executive Office for Simulation, Training and Instrumentation (PEO STRI) needs a system "capable of producing operational realism" that's portable and can capture and record test data for evaluation and analysis, it said in a request for information.

Operational testing is now conducted in a variety of locations, depending on the mission. For example, intelligence systems are tested at Fort Huachuca, Ariz., and Network Integration Evaluations are conducted at Fort Bliss, Texas.

The Army wants to build a system that can be used at several locations and can "operate in a wide range of environments, from urban to austere."

Tests can last several weeks. Other requirements for the future training environment include:

- Help PEO STRI's Project Manager for Instrumentation, Targets, and Threat Simulators and SOF Training Systems (PM ITTS) take a modular or block approach to modernization of the existing operational test/training technology suite;

- Provide real-time casualty assessments as part of a simulation;

- Create virtual environments that include “realistic special effects and accurate behavioral models to provide visualization of and immersion into the environment being simulated;”

- Support of on-site operational testing, including “test planning, integration of live-virtual-constructive technologies, design and development of hardware and software prototypes, production and development of test technologies, deployment of instrumentation to support on-site operational testing and logistical and maintenance support.”

The deadline for comment submission is Nov. 30. The Army expects to release a draft request for proposals between January and March of 2019; the RFP between April and June of that year; and the contract award between January and March of 2020, according to the agency announcement.

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## Army

### **Army to Recompete Training Center Support**

The Army is gearing up to recompete a support contract for the Fort Irwin National Training Center (NTC) in California that has booked \$148 million for incumbent High Desert Support Services, a joint venture of Aptim Federal Services LLC and Vectrus Inc. since 2012.

The NTC provides capstone live training for heavy brigade combat teams (BCTs), each with about 4,000 soldiers. It includes virtual elements and is fully instrumented to capture results of engagements for after-action reviews.

BCTs conduct component-unit training, including at home stations, to prepare for rotation to NTC. NTC training includes complex scenarios that involve force-on-force maneuvers and urban conflict in mock villages.

Each rotation lasts 18 days, an increase from the 14 instituted in 2015. Units typically spend about a month at NTC between preparing for the exercise and packing up to go home. That limits the number of heavy BCTs that can train at NTC in a year.

The active Army has 10 armored and seven Stryker BCTs and the Army National Guard has another seven BCTs in those two categories. If the Army wants to increase heavy BCT training rates, it will have to get creative, either shortening the time for each BCT rotation, making more of the exercises virtual, or expanding the capacity. The Army's light BCTs train at the Joint Readiness Training Center in Fort Polk, La.

The support contract will be broad in scope but specific in the 16 services required. The list appears to be based on the work being performed by the incumbent. However, the Army's assessment of threats has evolved to include potential disruption of communications via cyber and electronic warfare attacks.

The services listed in the sources-sought notice include:

- Access control services for specific buildings and ranges

- After-action review production and creation with take-home packages

- Live virtual constructive simulation operator support

- Professional civilians on the battlefield (PROCOB) and social media replication (SMR) support

- Fire markers and battlefield effect production services during live-fire events

- Division tactical operations center (DTC) and training analysis and feedback facility (TAFF) operational support

- Infantry division (ID) information assurance network support with network equipment life-cycle maintenance

- Mission command information system support/network operations support

- Distributed Common Ground System-Army (DCGS-A) operator support

- Radio operations with tactical operations center network support

- Joint planners (Air Force) subject-matter expert support

- Blue Force tracker operations (FBCB2 -BFT-JRC), installation, repair, and maintenance support

- Replication of human intel (HUMINT) operations subject-matter expert support

- Interagency core support subject-matter expert support

- Leadership training program support to include subject Matter Experts

- Special Operations Planners Subject Matter Expert Support.

The Army announced Oct. 24 that it's seeking sources for the work, with responses due Nov. 15. Timing for the actual request for proposals is uncertain, but the contract is expected to run for up to five years including options. The sources-sought notice said that based on previous work, the contract could yield \$38.5 million annually. The Army will hold a presolicitation conference Nov. 16 at NTC.

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# Legal News

## Proposal Evaluation

### **DynCorp Loses Challenge To \$10 Billion Anti-Narcotics Award**

DynCorp International LLC failed to show that the State Department improperly awarded AAR Airlift Group Inc. a \$10 billion contract to provide anti-narcotics flight operations, the U.S. Court of Federal Claims said in a one-page judgment (*DynCorp Int'l LLC v. United States*, Fed. Cl., No. 16-1704 C, judgment issued 10/31/17).

The court dismissed DynCorp's complaint, which alleged that the award was tainted by AAR's access to DynCorp's confidential information, as well as the State Department's failure to adhere to its solicitation rules.

An opinion detailing the court's rationale remains under seal.

By DANIEL SEIDEN

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## Proposal Evaluation

### **AT&T's Protest Trips Up \$283 Million Census Contract Award**

The Census Bureau must reopen a competition to provide mobile devices to support the 2020 census following AT&T Corp.'s protest of CDW Government LLC's \$283 million contract award, the Government Accountability Office ruled (*AT&T Corp.*, GAO, B-414886, 10/5/17, decision released 11/2/17).

AT&T, which submitted a \$191 million offer, showed that the bureau engaged in unequal discussions, and failed to adequately document its rationale for selecting CDW, the GAO said.

Procuring agencies aren't permitted to engage in conduct that favors one offeror over another when holding discussions, the GAO said.

When AT&T filed its protest, the bureau issued an override of the stay of performance that allowed CDW to begin work.

AT&T then convinced the U.S. Court of Federal Claims on Aug. 11 that the override was improper, forcing CDW to stop performance pending the GAO protest.

**Carrier Concerns** The bureau conducted unequal discussions because it had concerns about the offerors' cellular service carrier approaches but only raised them with CDW, the GAO said.

The bureau also improperly relied on an undocumented risk when making its selection decision, which may have been prejudicial to AT&T, the GAO said.

Crowell & Moring LLP represented AT&T. Blank Rome LLP represented CDW Government.

By DANIEL SEIDEN

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## DOD

### **Crowley Holds on to \$7 Billion Defense Transport Contract**

Crowley Logistics Inc. defeated a protest challenging its \$7 billion contract to provide freight transport services for the Defense Department, the U.S. Court of Federal Claims said in a one-page judgment (*XPO Logistics Worldwide Gov't Servs. LLC v. United States*, Fed. Cl., No. 17-1080 C, judgment filed 11/2/17).

Protester XPO Logistics Worldwide had argued that the U.S. Transportation Command engaged in unequal discussions with offerors and failed to reasonably evaluate their past performance.

An opinion detailing the court's rationale for its conclusion remains under seal.

This contract has been subject to three protests before the court and seven protests at the Government Accountability Office.

**Corrective Action Appeal** The GAO in March recommended reopening the competition following XPO's challenge to Crowley's initial selection.

The agency followed the recommendation and pursued corrective action to address flaws in the initial award. The agency ultimately selected Crowley again.

The corrective action plan was reasonable, the court ruled in July. XPO is appealing that decision with the Federal Circuit.

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Bid Protest**Stoppage Continues in \$2.8 Billion Debt Collection Protest, Court Rules**

Extraordinary circumstances don't exist to justify lifting an injunction in a contract protest and allowing student debt collection companies to perform for the Department of Education, the U.S. Court of Federal Claims said (*Continental Serv. Grp. Inc. v. United States*, Fed. Cl., Nos. 17-449C et al., 10/31/17).

Chief Judge Susan G. Braden also kept the injunction in place in the \$2.8 billion protest of debt collection awards because the department has said it will soon complete corrective action and issue new contract awards.

The injunction was improper because it kept the department from assigning debt collection work to lawful contracts, the government had asserted.

Braden also told the government to advise the Federal Circuit, which is reviewing an appeal in this matter, as to whether the imminent award decisions will render the appeal moot prior to the oral argument scheduled for Dec. 8 in that case.

**Imminent Awards** The department agreed May 19 to reopen the competition and follow the Government Accountability Office's competition recommendations, after several awards issued last year drew protests.

The government filed a status report Oct. 19, telling the court that the department has finalized evaluation reports, and that a contracting officer will complete responsibility determinations after successful offerors are identified.

BY DANIEL SEIDEN

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NASA**Halting Flawed NASA Award Would Be Too Harmful, Court Says**

Stopping Integrated Mission Support Services LLC from performing a \$103 million small-business contract for NASA would be too disruptive and harmful to the government even though the awardee lacked eligibility to receive the award, the U.S. Court of Federal Claims said (*Straughan Envtl. Inc. v. United States*, Fed. Cl., Nos. 15-1217C & 16-1181C, 11/6/17).

Protester Straughan Environmental Inc. showed that the award was improper, but halting performance of the environmental and health services contract at Florida's Kennedy Space Center would cause substantial risk to emergency medical services provided and the disposal of hazardous waste, Judge Nancy B. Firestone said.

Requiring NASA to resolicit for these essential services would be detrimental to the agency's public mission, the court said.

Straughan, which showed that the awardee lacked a valid mentor-protége agreement when it submitted its offer, has until Nov. 13 to make its case for the recovery of bid preparation and proposal costs, the court said.

Benton, Potter, and Murdock P.C. represented Straughan. Wilmer & Lee P.A. represented Integrated Mission Support Services.

BY DANIEL SEIDEN

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False Claims Act**PAE Beats Retaliation Claim From Afghanistan-Based Manager**

PAE Government Services Inc. defeated a False Claims Act retaliation suit from a former manager who said he lost his job for calling attention to the use of allegedly inadequate body armor under a security contract in Afghanistan, the U.S. District Court for the Eastern District of Virginia said (*PAE Gov't Servs. Inc. v. United States*, E.D. Va., No. 1:16cv1617, 11/1/17).

The former manager failed to show that PAE terminated his position because he was engaged in a protected activity as required for a retaliation suit, Judge T.S. Ellis III found.

PAE provided ample record evidence of legitimate reasons for the termination, including poor management and interpersonal skills, insubordination, and unprofessional conduct, the court said.

**No Punishment for Reports** Plaintiff David Irving performed as a manager for PAE overseeing subcontractors under a State Department contract to provide security services in Kabul, Afghanistan.

He lost his job for reporting to supervisors about non-compliant body armor and use of government vehicles to transport alcohol, among other reports, he contended.

However, evidence showed that PAE didn't threaten or discipline Irving because of his complaints, the court said.

Irving, in fact, received positive feedback for raising safety concerns, the court said.

Jackson Lewis PC represented PAE Government Services Inc.

BY DANIEL SEIDEN

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Proposal Evaluation**MIRACORP Keeps \$30 Million Tech Support Award, Watchdog Says**

MIRACORP Inc. will perform a \$30 million administrative and technical support contract for the General Services Administration, the Government Accountability Office ruled (*The Arcanum Grp. Inc.*, GAO, B-413682, 8/14/17, decision released 11/6/17).

Protester The Arcanum Group Inc. couldn't show that the agency unreasonably evaluated the offerors'

past performance, or that any evaluation errors were prejudicial, the GAO said.

A slightly higher rating under the past performance evaluation for the protester wouldn't have changed the competition outcome, the GAO concluded.

**Court Challenge Abandoned** The GAO shared this decision with the parties Aug. 14. The Arcanum Group responded by challenging the award decision with the U.S. Court of Federal Claims.

The Arcanum Group abandoned the protest Oct. 4 with a notice of voluntary dismissal.

PilieroMazza PLLC represented The Arcanum Group. David, Brody & Dondershine LLP represented MIRACORP.

By DANIEL SEIDEN

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## Standing

### **Air Force's Insourcing Move May Be Protested, Court Says**

Wildlife hazard company Loomacres Inc. may protest the Air Force's decision to seek bird aircraft hazard services from the U.S. Department of Agriculture, as opposed to seeking to award a contract through a procurement, the U.S. Court of Federal Claims said (*Loomacres Inc. v. United States*, Fed. Cl., No. 17-824C, 10/31/17).

The decision could have been a prejudicial violation of the Competition in Contracting Act and the Federal Acquisition Regulation, Judge Mary Ellen Coster Williams said.

The fact that an insourcing decision may be difficult to unravel isn't relevant to whether a protester may challenge the decision as a threshold matter, the court said.

**Interested Party** The Air Force decided to insource the services for Cannon Air Force Base, N.M., by reaching an agreement with the USDA prior to the expiration of the Air Force's contract with Loomacres.

Loomacres is an interested party to challenge the insourcing decision because it could prove that the Air Force violated a statute or acted irrationally, and convince the court to terminate the agreement with the USDA, the court said.

Whether doing so would cause too much harm to the government is an issue to be determined after further development of the record, the court said.

Scalfone Law PLLC represented Loomacres.

By DANIEL SEIDEN

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## False Claims Act

### **Lawyer in Wig Who Peddled Secret U.S. Suit to Plead Guilty**

A Washington lawyer from a prominent firm will plead guilty after being charged with trying to sell copies of two secret lawsuits involving companies that were under investigation by the Justice Department, his lawyer said (*United States v. Wertkin*, N.D. Cal., No. 17-cr-70131).

Jeffrey Wertkin, who worked for Akin Gump Strauss Hauer & Feld LLP, was arrested in January in the lobby of a hotel in Cupertino, Calif., where he allegedly showed up wearing a wig to collect \$310,000 for one of the lawsuits and was met by an FBI agent.

"Jeff led a good and honorable life for many years," Cris Arguedas, his lawyer, said in an email. "In a lapse of judgment, he made some serious mistakes. He is doing his best now to make amends."

Wertkin was charged with obstruction of justice and interstate transportation of stolen goods. Arguedas didn't specify the charges to which he will plead guilty, saying only that he plans to enter a plea this month.

**Former Justice Department Trial Attorney** Before joining Akin Gump, Wertkin had worked as a trial attorney at the Justice Department, which is where prosecutors said he removed copies of two sealed corporate fraud suits. He "led more than 20 major fraud investigations" while at the Justice Department but wasn't assigned to the False Claims Act complaints that he took without permission, according to court records.

Wertkin then contacted employees at the targeted companies — one in Cupertino and the other in Oregon. Identifying himself as Dan, he offered to provide the complaints for a fee, according to a revised indictment released Nov. 1. The companies aren't identified in court filings.

The Cupertino employee notified the FBI and agreed to record calls with Dan. Eventually, a meeting in a hotel was arranged so that Dan could be paid for the secret lawsuit. That's when he was arrested by FBI agents.

Akin Gump said it was shocked and troubled when it learned of the charges against Wertkin. The firm said it took "swift action" and that he was no longer employed there.

By JOEL ROSENBLATT

— With assistance from Jef Feeley

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# International News

## International Trade

### **Trump Tells King Salman He Supports More Saudi Arms Purchases**

President Donald Trump told Saudi King Salman he would support the purchase of American military equipment to keep Saudi Arabia safe in a phone call Nov. 4, hours after the Saudi military said it intercepted a ballistic missile launched by Yemeni rebels targeting an airport in Riyadh.

Trump and Salman discussed the “continuing threat of Iranian-backed Houthi militias in Yemen” and the intercepted missile attack, according to a call readout provided by the White House. Saudi Arabia has been leading a coalition of countries against the militias, which overthrew Yemen’s government in 2015.

Trump thanked the king for prior military purchases, including a \$15 billion investment in Terminal High-Altitude Area Defense (THAAD) anti-missile systems and billions of dollars in other investments.

The discussion between the two leaders also came hours after an anti-corruption purge that led to the arrest of dozens of high-profile Saudis, including the billionaire founder of Kingdom Holding Co., Prince Alwaleed bin Talal, a nephew of King Salman. The call readout issued by the White House did not say if the leaders discussed the arrests, and White House officials have not responded to requests for comment about the arrests.

The two leaders did discuss Trump’s request, first issued in a late-night tweet, that the Saudis list the Saudi Arabian Oil Co., better known as Aramco, on the New York Stock Exchange.

After speaking to Salman aboard Air Force One, Trump told reporters on the plane that he was motivated to send the tweet because the Aramco initial public offering “will be just about the biggest ever” and the U.S. wants “to have all the big listings.” The Saudis were not looking at listing on a U.S. exchange “because of litigation risk, and other risk, which is sad,” he said.

The Aramco IPO could be the world’s largest, with the Saudi government hoping to raise \$100 billion selling just 5 percent of the company. It is the centerpiece of Crown Prince Mohammed bin Salman’s “Vision 2030” reform plan, intended to diversify the kingdom’s economy and invest more heavily in infrastructure.

The arrests of the 11 princes and 38 current or former senior officials were done on the orders of a newly established anti-corruption committee headed by the crown prince.

By JUSTIN SINK

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## International Trade

### **Trump Pushes Japan to Buy Military Equipment, Hits Out on Trade**

President Donald Trump urged Prime Minister Shinzo Abe to purchase U.S. military equipment to create jobs in America after telling business leaders that Japan had an unfair advantage on trade.

Trump hailed the U.S.-Japan alliance even as he called for a reduction in the trade gap between the countries in a joint press briefing with Abe in Tokyo on Nov. 6. Trump reeled off several possibilities, including missile-defense systems, missiles and F-35 fighter jets.

“One of the things I think is very important is the prime minister is going to be purchasing massive amounts of military equipment, as he should,” Trump said. “It’s a lot of jobs for us and a lot of safety for Japan.”

Trump is on the first stop of a five-nation swing through Asia, where he plans to push his message of fair trade and freedom in the region backed by a strong U.S. military presence. The U.S.’s \$69 billion trade deficit with Japan is its second-highest behind only China, fueled largely by American imports of cars and electronics.

Despite Trump’s criticisms on trade and military equipment, no new major deals or policies were announced on his stop in Japan. Abe deflected questions on trade ties and instead focused on praising Trump for his commitment to the defense alliance.

Abe said Japan is buying Lockheed Martin Corp.’s F-35A fighter jets and missile interceptors from Raytheon Co. — deals that had previously been announced. He said Japan would buy more Aegis equipment from the U.S. for its ships.

“With the North Korean situation becoming more severe, and the Asia-Pacific security environment becoming harsher, I think we need to improve Japan’s defense capabilities in terms of quality and quantity,” Abe said.

Abe said that economic issues would be discussed in a separate U.S.-Japan dialogue. At the same time, he advocated high-standard rules for trade throughout the region.

After Trump withdrew from the Trans-Pacific Partnership (TPP) trade deal, the U.S. and Japan set up an economic dialogue helmed by Vice President Mike Pence and Japanese Deputy Prime Minister Taro Aso.

Those talks have largely focused on differences with currency and trade, with the U.S. pushing to lower agricultural tariffs and restrictions on American car sales in Japan. American negotiators are pushing for Japan to remove a safeguard mechanism on imports of U.S.

frozen beef that have increased tariffs to 50 percent from 38.5 percent.

**'Not Fair'** During the briefing with Abe, Trump said that he wanted Japan's economy to be "second" behind the U.S. Earlier in the day, he told a gathering of business leaders that he intends to fix the imbalance in U.S.-Japan trade ties by making it easier to do business in America.

"For the last many decades, Japan has been winning. You do know that," Trump said. "Right now, our trade with Japan is not fair and it isn't open."

Trump laid out his complaints about how Japan treats the U.S. unfairly in his eyes, noting that few American cars are sold in Japan and making a plea for Japanese automakers to build more in the U.S.

"Try building your cars in the United States instead of shipping them over," Trump said. "Is that rude to ask?"

Abe has courted Trump's friendship in a bid to ensure that trade tensions don't affect a military alliance with the U.S. that ensures Japan's security in the face of threats from North Korea and China.

**\$1.6 Billion Factory** Abe has pushed back on Trump's remarks about U.S. car sales in Japan, saying this year that a lack of advertising and dealerships played a role. He has also emphasized how Japanese companies are creating jobs in the U.S.

Japan's biggest auto trade association said 75 percent of Japanese-brand vehicles sold in the U.S. are built in North America. Toyota Motor Corp. and Mazda Motor Corp. are pressing for an incentive package of at least \$1 billion from U.S. states trying to land their planned \$1.6 billion joint car factory. The shared factory the Japanese automakers plan to open in 2021 is the only new auto assembly plant to be announced since Trump became president.

Toyota spokeswoman Akiko Kita declined to comment on Trump's speech.

White House officials said they're eager to recruit more Japanese companies to hire American workers. Japanese companies employ about 850,000 U.S. workers — a number Trump is hoping to grow — with automakers like Toyota and Honda Motor Co. already having sizable plants in the U.S.

**TPP Hurdle** That effort may be hampered by Trump's decision on entering office to withdraw from the TPP, a 12-nation free trade agreement. Japanese officials are still stinging from the decision, and have said they're eager to either negotiate a bilateral trade deal with the U.S. or win Trump back to the multinational agreement — which seemed unlikely in light of Trump's defense of his pullout from the pact.

"TPP was not the right idea," Trump said Nov. 6. "I'm sure some of you in this room disagree, but ultimately I'll be proven right."

Trump said he envisions easing trade restrictions in another way, outside the TPP framework, but offered few details beyond saying that he personally had the power to speed business deals that had been hung up in the past.

He cited the Keystone and Dakota pipelines that had been held up under the Obama administration. "In my first week, I approved both," Trump said.

Trump also took credit for recent record stock market highs and an addition 2 million workers in the workforce, saying: "I've reduced regulations terrifically, if I do say so myself."

— With assistance from James Mayger and Kevin Buckland.

BY JUSTIN SINK AND JENNIFER JACOBS

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### International Trade

#### **State Department Approves \$1.1 Billion to Support Boeing F-15s**

The State Department approved a \$1.1 billion foreign military sale to Qatar for support of its F-15QA multi-role fighter aircraft program, according to a statement.

The F-15QA is made by Boeing.

BY JACKIE EDWARDS

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### International Trade

#### **State Department OKs Possible \$140 Million Missile Sale to Canada**

The State Dept plans to approve potential \$140 million sale of AIM-120D advanced medium-range air-to-air missiles to Canada, the agency said in statement.

Raytheon Missile Systems is the prime contractor in the sale.

BY GREG SULLIVAN

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# BGOV Insights

## International Trade

### **NAFTA Implications For Government Contractors**

North American Free Trade Agreement (NAFTA) negotiators deadlocked during the latest round of talks over disagreements regarding changes to government procurement rules, among other things.

Potentially at stake in the negotiations are hundreds of millions of dollars in government contracts. U.S. negotiators are seeking a cap to America's market at a dollar-for-dollar level with the combined Canada-Mexico market.

Companies incorporated in Canada won \$850.2 million in U.S. government contracts during fiscal 2016, while U.S.-based companies received \$503.4 million from the Canadian government. Mexican vendors won just \$1.1 million in U.S. awards. All contracts in this analysis are expressed in U.S. dollars and U.S. fiscal years.

Under American negotiators' proposal, the combined value of contracts that Canadian and Mexican companies could access couldn't exceed the total value that U.S. firms could win in those two countries, Bloomberg Law's Rossella Brevetti and Emily Pickrell reported.

Canadian Foreign Affairs Minister Chrystia Freeland said the proposal would put Canada and Mexico's market access in the U.S. behind that of Bahrain. "We find that proposal hard to understand," she added.

Beyond changes to procurement, the agreement's future is at stake. President Donald Trump said he will withdraw from the pact if he can't get a deal that he considers more favorable to the U.S.

**Potential Changes** There's currently no cap on how many U.S. contracts can be awarded to Canadian or Mexican vendors. Under NAFTA's chapter 10, Canadian and Mexican vendors can submit bids for any contract valued above a certain threshold, which the U.S. must consider without regard for the vendor's country.

Changes to, or U.S. withdrawal from, NAFTA wouldn't necessarily mean immediate changes for Canadian contractors. The U.S. and Canada are both party to the World Trade Organization's agreement on government procurement (GPA), which also provides non-discriminatory market access for most contracts exceeding certain cost thresholds. Contractors in Canada and the U.S. would probably maintain access to each other's markets under those terms. Mexico isn't among the 47 WTO members covered by the agreement.

Canada's access under the GPA might not last, though. An April executive order from Trump directed the Commerce Department to study the GPA and the U.S.'s other agreements with procurement provisions.

"If the analysis mandated by this report indicates any agreement is failing to meet the Trump standard of fairness and reciprocity so that the U.S. is a net loser, these

findings will inform the President's decision to rescind or renegotiate these deals," according to the order.

Canada and the U.S. also have policies and agreements outside NAFTA and the WTO that establish their right to collaborate on defense contracts, free of tariffs or other trade barriers. It's unclear how those arrangements could be affected by the administration's proposed changes.

**Top Contractors** Canadian vendors that could be affected by changes to U.S. procurement agreements include the Bank of Nova Scotia and the Toronto-Dominion Bank. If Canada restricted U.S. market access, affected vendors could include Cubic Corp., Harris Corp., and Krueger International Inc.

U.S. and Canadian agencies are among the top suppliers between the countries. The Canadian Commercial Corporation (CCC) acts as a prime contractor for defense contracts worth more than \$150,000 with the U.S. government, while the Defense Department's military service branches have programs to facilitate sales of defense-related goods and services by U.S. companies.

The top U.S. supplier to Canada in fiscal 2016 was Lockheed Martin Corp. with \$77.6 million in contract receipts. The majority was from a \$65.9 million contract won by its Sikorsky International Operations Inc. subsidiary.

The CCC received \$519 million from the U.S. government during fiscal 2016, more than 60 percent of U.S. spending that went to companies incorporated in Canada. Many of the other top contractors from Canada are subsidiaries of companies headquartered in the U.S. or elsewhere.

**Defense Dominates** In fiscal 2016, 75 percent of the U.S. government spending that went to Canadian companies was defense-related, while 81 percent of Canadian government spending on U.S. companies was defense-related. Defense Department policy gives equal consideration to defense contract bids from both American and Canadian companies.

U.S. spending on contracts with Canadian companies was near a 10-year low in fiscal 2016.

Canadian spending on contracts with U.S. companies is near average in its latest year of reported data (U.S. fiscal 2017), aside from one uptick in fiscal 2014.

**Nondiscriminatory Access** NAFTA sets formal procedures and value thresholds for governments to follow in soliciting and selecting contracts, and above which firms in the three countries can bid on each other's construction and goods and services contracts. Bids can't discriminate based on country of origin.

A provision carried over from the Canada-U.S. Free Trade Agreement, which preceded NAFTA, also allows nondiscriminatory bids between Canada and the U.S. on certain federal goods contracts greater than \$25,000. Manufactured goods have to include at least 50 percent Canadian or U.S. components.

NAFTA includes situations in which countries can use limited tendering procedures, including in emergencies and for follow-on from research and development. The procedures allow them to favor domestic companies for small-business set-aside contracts, certain research and development projects, or national security programs.

**Outlook** “We have seen no indication that our partners are willing to make any changes that will result in a rebalancing and a reduction in these huge trade deficits,” U.S. Trade Representative **Robert Lighthizer** said at the close of the latest round of NAFTA negotiations. Freeland and Mexican Secretary of Economy **Ildefonso Guajardo Villarreal** expressed frustration with the U.S.’s demands.

The parties are trying to reach an agreement by the end of March 2018. The next round of talks will start Nov. 17.

Implementing a renegotiated deal or withdrawing from the pact will be a lengthy process, which will require action by Congress.

By **SARAH BABBAGE** AND **PAUL MURPHY**

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