

Government contractor quarterly review

Providing quarterly regulatory updates to government contractor compliance professionals.

PwC Government contracts practice | Report for Q3 government fiscal year | July 2021

Government contractors experienced some reprieve from regulatory updates in Q3, but the President's most recent cybersecurity executive order will likely have far-reaching ramifications for the industry. Other notable developments include potential changes to cloud services procurement and the GSA's TDR pilot program, as well as increased fraud enforcement in the healthcare industry.



Topic	Key updates
FAR final rule: Analysis for equipment acquisitions	Implements a section of the FAA reauthorization act of 2018, which requires, when acquiring equipment, a case-by-case analysis of cost and other factors associated with certain methods of acquisition.
FAR final rule: Fair opportunity threshold	Implements a section of the FY20 NDAA to raise the threshold for fair opportunity on certain task and delivery orders to the micro-purchase threshold.
Executive order 14028: Improving the Nation's cybersecurity	Extends cyber breach reporting requirements to all FAR-based contracts. Traditionally, only defense contractors have had specific requirements regarding breach reporting (DFARS 252.204-7012). As a result, most federal contractors, including commercial-off-the-shelf (COTS) software providers, will likely see new cybersecurity standards built into contract terms, and will be required to share more information on cyber incidents. More immediate impacts for federal contractors will involve enhancements to software supply chain security (for COTS and non-COTS providers), as well as the likely addition of zero-trust architecture requirements to NIST requirements and CMMC.

For more detailed information on this EO, see [PwC's Cybersecurity and privacy library](#).

DCAA FY20 report to congress: Audit trends and priorities

DCAA issued its report to congress on FY 2020 activities earlier this year. The report includes several key takeaways that should inform the audit and oversight landscape for the remainder of 2021 and beyond.

- DCAA experienced success with remote work and expects to continue a certain degree of remote work moving forward.
- DCAA implemented the independent public accountant (IPA) incurred cost audit program, which it expects to continue at a similar level.
- The audits yielding the greatest savings and ROI to the government were forward-pricing audits, followed by incurred cost audits. DCAA expects this trend to continue.
- DCAA is playing an expanded role in advising contracting officers administering Other Transaction Authorities (OTAs).

Despite critical OIG report, GSA set to expand TDR pilot program

In June, the GSA OIG released an audit report on the Transactional Data Reporting (TDR) pilot program concluding that the program has yet to accomplish “its intended purpose of improving taxpayer value.”

The OIG report characterized TDR data as often “inaccurate and unreliable” and that TDR data is being used to make pricing and contracting decisions.

Despite the OIG’s recommendation to develop an “exit strategy” to end the program, GSA leadership announced it will instead “consider a careful, focused expansion” of the pilot program after a more favorable review of the program was conducted by GSA itself.

For the time being, schedule contractors should prepare for the TDR pilot program to expand with potential for changes. Contractors already participating in the pilot should continue to ensure accurate reporting of required data elements.

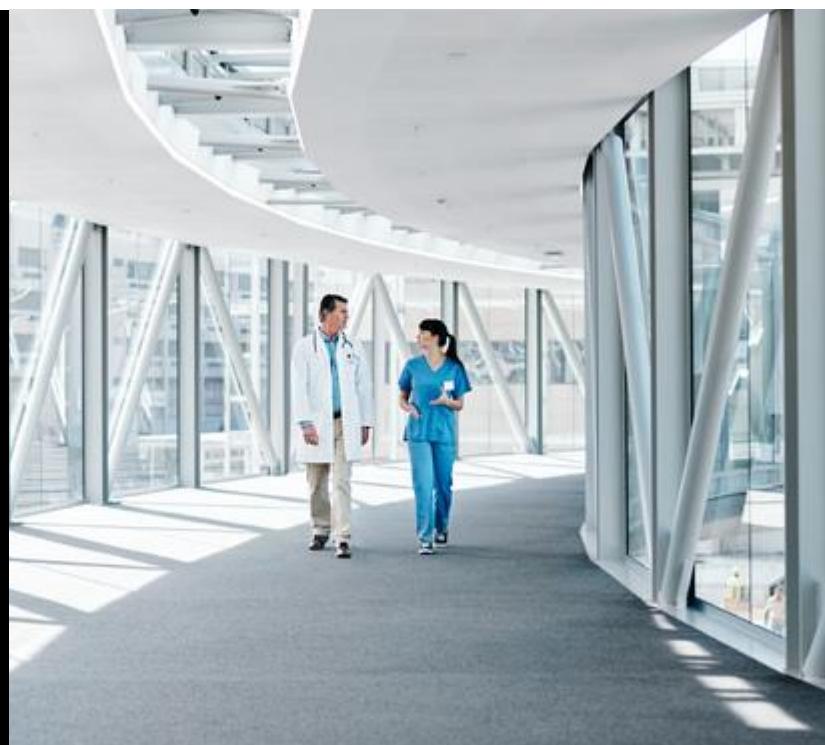
DOJ reports record health fraud cases

In June the DOJ disclosed it opened a record number of healthcare false claims act cases last year, with over 65% of prosecuted cases relating to healthcare fraud.

Per the DOJ, top enforcement areas include:

- **Misuse of electronic health records.**
- **Contributions to the opioid epidemic.**
- **Abuse of senior citizens.**
- **Exploitation of Medicare’s managed care program.**
- **Improper claims under COVID-19 relief funds.**

Healthcare contractors should prepare for continued scrutiny and enforcement actions.



Big changes to government procurement of cloud services

GSA

A GSA draft policy issued in May will permit agencies to purchase cloud services on a consumption basis, in order to allow for greater flexibility in usage and accommodate spikes in demand for cloud capacity. GSA will also amend applicable FSS solicitations to incorporate a class deviation making the price reductions clause (GSAR 552.238-81) inapplicable to cloud services offered on a consumption basis.

DoD

The DoD recently published its first Outside the Continental United States (OCONUS) Cloud Strategy, which emphasizes the need for cloud innovation at the tactical edge.

The primary goal is to give OCONUS users the same access to cloud innovations and capabilities currently accessible to US-based users. The OCONUS Cloud Strategy is a departure from the direction industry believed the DoD was moving based on its 2018 DoD Cloud Strategy and the JEDI Cloud project—a single enterprise cloud.

Updates on FY22 DoD budget and infrastructure bill

Biden infrastructure bill

President Biden's proposed infrastructure bill is still locked in preliminary negotiations. The current version of the bill includes ~\$1.2 trillion in spending. Major items include \$49 billion for public transit, \$66 billion for rail, and \$109 billion to roads, bridges, and other major projects.

FY22 DoD budget

The President and Congress are also negotiating the FY22 defense budget. The President's current proposal is for \$715 billion (\$11B increase YoY). Notable aspects of the President's DoD budget include \$398 million for 5G, \$874 million for AI, 8.7% increase in IT spending, and enhanced focus on shipbuilding long-range firepower, and biological threats.

PwC is thoroughly versed in government contracting. We can help you navigate the often challenging and conflicting demands from strategy through execution to meet your government contracting needs.

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