Ethics and Compliance Programs
for US Government Contractors

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Working for the US Government

- How is working for the Government different than working for commercial clients and why is it important?
- The US Government procures in excess of $450,000,000,000 in goods and services annually
- Operating in virtually every country in the world, with many international contractors
- Including billions of dollars in federal contracts to small business prime and subcontractors, who must be sufficiently developed to appreciate the myriad differences between commercial and government contracts
Ethics in Government Contracts

- Awards may Only be Made to Responsible Contractors
  - “Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.”
  - “No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility.” (FAR 9.103)

Ethics in Government Contracts

- The US Government procures almost every conceivable product and service – nearly 2/3 of all purchases are on services and 1/3 on products
  - IT services is currently a huge portion of the annual spend
  - Other big drivers are aerospace and defense, and healthcare related
- Over 80,000 solicitations posted annually, plus schedule contracting
- Approximately 100,000 contractors in the active federal contractor base
The FAR

- The majority of these contracts are governed by their own system of rules, the Federal Acquisition Regulations (FAR)

- Agency Supplements – *e.g.* DFARS, AFAR, DEAR

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The Federal Acquisition Regulations (FAR)

- Principle set of rules by which executive agencies procure good and services
- Significantly more voluminous and regulated than commercial transactions
- Includes all laws, administrative rules and regulations applicable to government procurement, and is further governed by additional agency FAR supplements, which are also voluminous
- Procurement regulations reflect the Government's role in society and are also meant to uphold public trust, and to carry out a variety of public policy objectives that may have little to do with the actual goods or services being procured
The Federal Acquisition Regulations (FAR)

- Accordingly, there are a significant number of ethics and compliance rules that have no counterpart in commercial contracting
- This webinar will focus on a high level overview of those areas of difference between commercial and government contracting
- Highlight those areas of heightened sensitivity and scrutiny that contractors face in government contracts
  - Each of these 8 topics could easily be an hour long session in their own right, so this session is intended to provide an identification of some of the larger issues, and a basic review of the key regulations

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Agenda

1. Ethics and Compliance program requirements
   A. Code of Business Ethics and Conduct and related requirements
   B. Mandatory disclosure requirements
2. Gratuities
3. Hiring Former Government Officials
4. Procurement Integrity Act
5. Conflicts of Interest
6. Truthful Cost and Pricing Data
7. Combatting Trafficking in Persons (Anti-Human Trafficking)
8. False Claims Act
   A. Qui Tam rules
   B. FCA expansion
1. Contractor Code of Business Ethics and Conduct:

- Despite having thousands of civil and criminal remedies, some that have been in place for over a century, the government only recently codified requirements to have a Code of Business Ethics
  - Implemented in 2008, affects only contractors over a certain dollar threshold
  - The regulations do not address the quality or content of a contractor's code, or even require that a copy be given to the government
  - But it does provide some aspirational requirements, as well as some tangible requirements, which follow

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1. Contractor Code of Business Ethics and Conduct

- The clause is required if contract exceeds $5 million and performance exceeds 120 days
- Applicable to Subcontracts in excess of $5 million and a performance period of more than 120 days
- Inapplicable to Commercial Items under FAR Part 12
- Inapplicable if contract is performed entirely outside the United States
- Inapplicable if Contractor is a small business concern
1. Contractor Code of Business Ethics and Conduct

- Requires Display of Fraud Hotline Posters
- Contractors must have a written Code of Business Ethics and Conduct within 30 days of contract award
- Ongoing Awareness Program established within 90 days of contract award
- Mandatory Flowdown to subcontractors
- Mandatory disclosure

1. Contractor Code of Business Ethics and Conduct:

- FAR 52.203-13, effective December 2008
- Contractors shall "exercise due diligence to prevent and detect criminal conduct," and
- "promote an organizational culture that encourages ethical conduct" (more on "awareness" in a later slide)
- There is to be timely reporting, in writing, to the agency Office of the Inspector General, with a copy to the Contracting Officer, whenever the contractor has credible evidence that a principal, employee, agent, or subcontractor has committed a violation of federal criminal law in connection with the award or performance of any government contract performed by a contractor or a subcontract thereunder.
1. Contractor Code – the Mandatory Disclosure Rule

- Timely disclosure to agency IG of “credible evidence” of Title 18 violation or False Claims Act violation
- Possible suspension and debarment for failing to disclose credible evidence of fraud of government overpayment
- Contractors must demonstrate full cooperation with any government agencies responsible for audit, investigation, or corrective actions

- Compare to your obligations under commercial contracts to a government contract governed by this clause
  - Examples

1. Contractor Codes of Business Ethics and Conduct:

- Contractors must also establish an ongoing business ethics awareness and compliance program, which
  - Establishes procedures to establish discovery of improper conduct in connection with government contracts
  - Ensure corrective measures are instituted and carried out

- Program should include:
  - Assignment of responsibility at a sufficiently high authority level
  - Reasonable efforts not to include someone whom due diligence would have exposed as engaging in conduct that is in conflict with the Code of Business Ethics and Conduct
    - Monitoring and auditing
    - Periodic evaluation of the program, especially if criminal conduct has occurred
    - Periodic risk assessment of the risk of criminal conduct
  - Internal reporting mechanism
  - Disciplinary action for improper conduct or the failure to take reasonable precautions to prevent improper conduct
  - Timely disclosure, as described earlier

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1. Contractor Codes of Business Ethics and Conduct:

- Hotline Posters also required unless the contract is for commercial items or is to be performed entirely outside of the United States
  - As a rule, other clauses also require Hotline posters, and they should be posted as a part of the contractors comprehensive Business Ethics and Conduct program anyway.

| Compliance and Ethics Overview for US Government Contractors |

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1. Contractor Codes of Business Ethics and Conduct:

- **Summary:**
  - Business must have a code of conduct, and flow the requirements down to subcontractors, if they have contracts exceeding the threshold
  - Contractors must self disclosure certain behavior, and cooperate with government investigators
  - The requirements provide an opportunity to get ethics and codes of conduct into the prime-subcontractor discussion, and to raise awareness internally as well
  - However, the regulations are not applicable to everyone, and there are no guidelines regarding the quality, length or content of a company’s code

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2. Gratuities

- Most contractors appreciate the illegality of bribery, kickbacks, and overt influence peddling.
- However, the issue of “gratuities” is a potential pitfall for new government contractors.
- Certain actions that would be characterized as “marketing” in the commercial sector can be illegal in the government sector, and lead to contract termination and even criminal charges.

2. Gifts and Gratuities – the Basic Premise:

- Gifts and gratuities exchanged between customers and vendors is a commonly accepted practice in commercial business.
- Requirements in government contracting generally prohibit the practice, however, numerous exceptions and exemptions exist, making compliance a challenging task.
2. Gifts and Gratuities

- Government employees may not, directly or indirectly, solicit or accept a gift from a prohibited source given because of the employee’s official position
  - Slight variations between executive, legislative, and judicial branch employees
  - We will focus on executive branch rules since that is where the majority of contractor-government interaction occurs

Rationale:
- Maintain public trust
- “Employees shall not use public office for private gain”

Regulations formalized:
- 5 USC § 7353 et seq
- Executive Order 12674
- Office of Government Ethics implementing guidelines
- FAR 52.203-3, FAR 3.201-204
- Other, e.g., agency specific guidelines
2. What is a Gratuity?

- Anything of value
- Tangible or intangible: good, services or even discounts
- Examples in FAR includes “meals or entertainment”
- Notable legal cases involve Super Bowl tickets, cash, private jet transport and job offers, political contributions, professional and college baseball and football tickets, target gift cards, spa and salon gift cards, gold plated pens, scotch, helicopter rides, shirts, model airplanes, leather jackets, business trip expenses, cellular phone bills, briefcases, pharmaceutical samples
- Many cases overlap with bribery and Anti-Kickback Act statute
- Case law reflects not only contractual and administrative (personnel) ramifications, but also criminal indictments

2. Gratuities, ramifications detailed at FAR 52.203-3

- Contracts may be terminated if the government determines (after notice and hearing):
  1. The contractor, its employees, agent or representatives offered or gave gratuity (e.g. an entertainment or gift) to an officer, official or employee of the government
  2. Intended by the gratuity to obtain a contract or favorable treatment under a contract

In layman’s terms: you should not entertain, feed, or give gifts to your contracting officers or other government representatives

In addition to bad press or damaged relationships, you could also have your contracts terminated for default
2. Gifts and Gratuities - Exceptions

- 5 CFR Part 2635 Subpart B
  - 20/50 rule
  - Allows Executive branch Government employees to accept unsolicited gifts of not more than $20 per occasion, and in no case greater than $50/year
  - Cannot be segregated by individual contributors – applies companywide
  - Should be declined even if under $20 if it gives the appearance of conflict
  - Even these small exceptions cannot be “routine”
  - Government employee may not “pay the difference”
  - Many firms implement a zero-tolerance policy

- Nine other exclusions, including:
  - Modest refreshments that are not part of a meal, such as coffee or donuts
  - Items of little or no intrinsic value such as Christmas cards or certificates intended for presentation
  - Bank loans on terms generally available to the public
  - Benefits such as discounts available to all of a class of personnel (e.g. Government or military discounts)
  - Some rewards or prizes given to competitors at contests including random drawings
  - Pensions from prior employment
  - Anything paid for by the government or secured by the government
  - Any gift accepted under statutory authority
  - Anything for which the government employee pays market value

  - Revises prior guidance to impose a duty to decline gifts that may be permissible under the rules, but for which an “appearance of impropriety” is present
  - New standard is flexible and non-binding
2. Gifts and Gratuities

- Compare to typical commercial contracting interaction

- Summary – despite the exceptions to the rule banning gratuities, many companies employ “zero tolerance” policies to avoid appearance issues, or the risk of a violation

- “Allowable exceptions” have a tendency to grow or evolve into unallowable events

3. Restrictions on Former Government Officials, Ethics in Government Act

- Prohibits “revolving door,” prevents personal gain for government personnel entering private employment

- Prohibitions on personnel involved in Acquisition and those technical personnel “personally and substantially” involved with certain matters

- Though infrequent, government officials have run afoul of these rules, resulting in lost job opportunities, reputational damage, and in some cases criminal liability and prison sentences
3. Restrictions on Former Government Officials, Ethics in Government Act

- **Examples:**
  - Representation on particular matters (lifetime ban)
  - Two year restrictions concerning particular matters under official responsibility
  - One year restrictions on aiding or advising
  - One year restrictions on certain senior personnel of the executive branch and independent agencies
  - Restrictions on lobbying (remainder of administration/2 years)
  - Analyses are very fact dependent and should be viewed thoroughly with both Agency and company HR and counsel
  - The Procurement Integrity Act (see 41 U.S.C. § 2104 and 48 C.F.R. §§ 3-104.1 through .09) imposes additional restrictions for certain employees who participated in procurement

- Compare with commercial contracts: non-compete agreements, non-solicitation clauses

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"We're going to impose a lifetime ban on people that give these massive contracts out, or even small contracts," President-elect Trump said. "You want to work for the United States, you work for the United States. You are not going to work for the people that build these planes."
4. Procurement Integrity Act

- See 41 USC 8423, FAR 3.104
- The Act addresses several different aspects of government acquisition:
  - Act re-incorporates gratuities, “seeking employment”, and post employment restrictions
  - Also addresses improper contact with Government during an ongoing procurement
  - Addresses “unfair competitive advantage”
- Improper contact with Government during an ongoing procurement
  - Can penalize bidders and incumbent contractors for “improper disclosure” or “improper receipt” of information relating to a federal procurement

Examples of violations:
- Employment discussions
- Incumbent (or any bidder) obtaining non-public information
  - From government personnel who have gone to work for a contractor
  - From related parties or affiliated contractors
- Improperly discussing an ongoing procurement with the government acquisition personnel
- Preferential treatment of one contractor over another
- Personal or organizational conflicts of interest
- Government accidentally disclosing competitor’s information
4. Procurement Integrity Act

- Consequences and Penalties
  - Bid protests, exclusion from acquisition opportunities
  - Forfeiture of all profits obtained under the contract
  - Termination for default
  - Debarment
  - Criminal penalties
    - Imprisonment for up to 5 years, fines, or both
  - Civil penalties
    - Up to $50,000 for individuals or $500,000 for companies
  - The Government can also cancel the procurement or rescind the contract

5. Conflicts of Interest (COI)

- Two main areas: Personal and Organizational
- Organizational COI falls into three basic areas:
  - Impaired objectivity
  - Unfair access to non-public information
  - Biased ground rules
    - See DFAR Subpart 203
- Avoid even the appearance of a COI
- Conflict of interest rules include both civil and criminal regulations
  - 18 USC §208 - executive branch employees may not participate in a matter that will have a predictable effect on their financial interests (including spouse, general partners, outside employers, minor children or prospective employers)
5. Conflicts of Interest (COI)

- Organizational Conflicts of Interest
  - Unequal Access To Information
    - when one firm has access to non-public information that may provide the firm a competitive advantage in a government procurement
    - Could be the incumbent or an affiliated company
  - Biased Ground Rules
    - Where a company, as part of its performance of government contract, has some input or effect on the ground rules for a subsequent procurement
    - e.g. – company assists in writing the statement of work
  - Impaired Objectivity
    - when a firm’s work under one government contract may involve the firm evaluating its own (or affiliated company) performance – either for new proposals, award fee, change order request, or some other contract decision

- Organizational Conflicts of Interest – Ramifications
  - Disqualification from acquisitions
  - Increased risk of bid protests
  - Requirements to disqualify personnel or business units from acquisition opportunities
  - Reputational impact

- Takeaway/Summary:
  - “Good competitive intelligence and marketing” in a commercial context could disqualify you from government contract work
  - Fairness and objectivity is important in government contracting
5. Conflicts of Interest (COI)

- **Personal conflicts of interest**
  - Conflicts can exist with regards to family, friends, neighbors etc.
  - Can exist in the context of hiring or procurement (employees, subcontractors, vendors)
  - Need not rise to the level of a kickback to create an impermissible conflict
  - Outside financial interests (e.g. investments)

- Companies should have a policy and a mechanism for formal disclosure

6. Truthful Cost or Pricing Data

- Unique government contracts rule regarding the disclosure of contractor data in a negotiation situation
- Requires contractors and subcontractors to disclose to the government complete, accurate, current cost and pricing data
  - E.g. wages, overheads, indirect rates, subcontractor costs and quotes, hours, quantities, etc.
- Creates liability for the contractor and cost recovery for the government incomplete cost or pricing data
- Compare to commercial negotiations
6. Truthful Cost or Pricing Data

- Public Law No. 87-653, 1962
  - "Defective pricing" clauses entitle the government to cost reductions
  - Formerly known as "Truth in Negotiations Act (TINA); changed per FAC 2005-073, May 29, 2013
- Enacted to curb "excess profiteering" by government contractors

- Intended to place government in equal bargaining position
- Applicable to negotiated contracts (and mods) exceeding $700K, unless
  - Adequate price competition
  - Commercial item
- Disclose "certified cost or pricing data"
  - All data a reasonably prudent buyer would expect to affect price negotiations significantly
  - Must certify as of date of agreement on price
  - Applies to modifications, even if not applicable to basic contract
- Allows for retroactive price reduction for defective pricing; could lead to penalties or FCA liability
6. Truthful Cost or Pricing Data

- Requires contractor to disclose:
  - Wage rates
  - Overhead rates
  - Proposed profit rates
  - In some cases, historical profit rates or historical production data
  - Subcontractor quotes
  - Discounts
  - All other “verifiable” data that a “prudent buyer or seller” would consider “material” to the negotiation

- Penalties include:
  - Cost disallowance, with interest, escalating to False Claims Act issues (see later slides)
  - Negative performance evaluations, impacts ability to obtain future work
  - Accounting system disapproval

7. Combatting Trafficking in Persons

- Few people would debate the purpose and intent of a clause that disallows and penalizes those associated with human trafficking

- Yet it may be unlikely to see these in commercial contracts, as commercial firms will leave the redress for explicitly illegal behaviors to law enforcement and criminal justice systems, vs. creating contractual remedies for them
  - Enforcement, and proof issues
  - Commercial firms cannot act as police, and may not have the resources to bear the burden of proof in order to enforce such clauses

- Obligations
  - Understand key terms
  - Implement compliance program
  - Flowdowns
  - Understand requirements for annual certification
7. Combatting Trafficking in Persons

- Government solicitations and contracts shall—
  a) Prohibit contractors, contractor employees, subcontractors, subcontractor employees, and their agents from—
     1) Engaging in severe forms of trafficking in persons during the period of performance of the contract
     2) Procuring commercial sex acts during the period of performance of the contract;
     3) Using forced labor in the performance of the contract
     4) Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee’s identity or immigration documents, e.g. passports or drivers’ licenses
     5) (i) Using misleading or fraudulent practices during …recruitment
        (ii) Using recruiters that do not comply with local labor laws of the country in which the recruiting takes place
     6) Charging employees recruitment fees
     7) (i)(A) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment

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7. Combatting Trafficking in Persons

- U.S. Government’s Zero Tolerance Policy
  - The United States initially adopted a zero tolerance policy with the signing of the National Security Presidential Directive 22 (NSPD-22) in 2002
  - DoD Instruction 2200.01, “Combating Trafficking in Persons (CTIP),” established DoD TIP policies, responsibilities, and reporting requirements for promoting the U.S. Government’s zero tolerance policy within the DoD
- Executive Order 13627, 2012 – “Strengthening Protections Against Trafficking in Persons in Federal Contracts”
  - Strengthens the efficacy of the Government’s zero-tolerance policy on trafficking in persons by calling for stronger prohibitions on contractor engagement in human trafficking-related activities, new tailored compliance measures particularly in at-risk industries and sectors, and additional training in support of monitoring, identification, and compliance efforts
7. Combatting Trafficking in Persons (cont’d)

  - Allows the Government to terminate a contract if the prime or subcontractor commits act that directly support or advance trafficking in persons. Such acts include:
    - Confiscating an employee’s identity or immigration documents
    - Offering employment using fraudulent or misleading pretenses
    - Charging placement or recruitment fees
    - Providing housing that fails to meet the host country housing and safety standards

Takeaway/Summary:
- Again, no one would likely argue the intent of these clauses, but they create obligations that you may not see in commercial contracting
- Due diligence, vetting and management of potential supply chain vendors, are all tasks that will have a cost and time impact, and companies also need to evaluate the risk of non-compliance as well
- Risks also exist further down in the supply chain than your first tier subcontractors and vendors
8. False Claims Act 31 USC § 3729

- Broad law imposing liability on persons and company who defraud government programs
- One of the oldest government procurement laws, enacted in 1863, the Act has been frequently broadened by both Amendments and case interpretation and currently serves as the government’s primary tool against fraud
- Includes a qui tam provision for “relators” to file actions on behalf of the government
- FCA cases are prominent in the areas of pharmaceuticals and healthcare, military spending, and in contingency environments

Liability for any person, who: (paraphrased)

- Knowingly presents (or causes to be presented) a false or fraudulent claim for payment or approval
- Knowingly makes, uses a false record or statement material to a false claim
- Has possession, or control of property or money used, or to be used, by the Government and knowingly delivers less than all of that money or property
- Is authorized to make or deliver a document certifying receipt of property to be used by the Government and, with intent to defraud, makes or delivers the receipt without completely knowing that the information is true
- Knowingly buys, or receives public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or
- Knowingly makes or uses a false record or statement material to an obligation to pay money or property to the Government, or knowingly conceals or knowingly and improperly avoids an obligation to pay money or property to the Government
- Conspires to commit a violation of any of the above
FCA Claims can be triggered by almost anything under a government contract….

- Resumes, certifications, licenses
- Time cards
- Computer use
- Prevailing wages
- Worker classifications
- Invoice rates or quantities
- Quality control inspection reports
- Test results
- Small Business participation or identification
- Subcontractor substitution
- Buy America Act
- Sale/lease back agreements
- Key personnel
- Advance billing
- Substituting materials or equipment
- OH or G&A rates
- Third party invoices
- Travel costs
- Environmental compliance
- Overbidding
- Underbidding
- Delay claims
- Bid schedules
- Design or schedule documents
- and countless other issues

8. False Claims Act 31 USC § 3729

- Vicarious liability exists for FCA
  - Companies can be held liable for “failure to self police”
  - Liability attached even though company did not benefit from employees conduct
    - E.g. kickbacks, employee personal misconduct

- Expanding, but uncertain liability under recent cases
  - *Universal Health Services, Inc. v. U.S. ex rel. Escobar*

- Damages
  - Actual damages become treble damages, plus
  - Per claim damages (recently increased) range from $10,781 to $21,563 per invoice
    - Can lead to circumstances were the government may have minimal actual damages but massive penalties
FCA Recovery in 2016

- Justice Department Recovered Over $4.7 Billion From False Claims Act Cases in Fiscal Year 2016
  - Third Highest Annual Recovery in FCA History
  - Of the $4.7 billion recovered, $2.5 billion came from the health care industry, including drug companies, medical device companies, hospitals, nursing homes, laboratories, and physicians.
  - The next largest recoveries came from the financial industry in the wake of the housing and mortgage fraud crisis. Settlements and judgments in cases alleging false claims in connection with federally insured residential mortgages totaled nearly $1.7 billion in fiscal year 2016 – the second highest annual recovery in this area.
  - The DoJ recovered $82.6 million in false claims from BP Exploration and Production Inc. (BP) arising from the April 2010 Deepwater Horizon/Macondo Well explosion and oil spill in the Gulf of Mexico.

Holding Individuals Accountable under the FCA

- On Sept. 9, 2015, the Department issued a memorandum on individual accountability for corporate wrongdoing issued by DOJ Deputy Attorney General, Sally Yates (“Yates Memo”). This memorandum reinforced the Department’s commitment to use the False Claims Act and other civil remedies to deter and redress fraud by individuals as well as corporations.

- U.S. attorney general nominee Jeff Sessions suggested at his Senate Confirmation Hearing that his Department of Justice would follow the Yates Memo's mandate to pursue individuals in corporate FCA cases.
  - Asked whether he would continue cases like that against Wells Fargo & Co. over fraudulent sales practices, Sessions said: “Sometimes, it seems to me … that the corporate officers who caused the problem should be subjected to more severe punishment than the stockholders of the company who didn’t know anything about it.”
Conclusion

- Because of public trust issues involved in dealing with the US Government (in any capacity), companies working for the US Government as contractors/vendors must be acutely aware of the many rules impacting compliance and ethical behavior.
- Many of these rules may have no commercial equivalent, or a significantly more relaxed commercial equivalent.
- All companies run the risk of non-compliance, but companies that perform primarily commercial work, and execute a smaller percentage of government work run a particular risk that their policies and employee training to do adequately differentiate between the two in practice.
- Non-compliance in the government sector can have civil and administrative remedies, as well as criminal ramifications.

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Glenn Sweatt is a counsel in the firm’s Government Contracts & Disputes Practice and is located in the Silicon Valley office. He has more than 25 years of experience in contracts management and compliance. In his latest role, Mr. Sweatt was the Vice President of Contracts and Compliance at a large construction and energy contractor that supported Federal government agencies on classified and unclassified projects worldwide.

Mr. Sweatt has hands-on experience dealing directly with government contract issues for all of the major Department of Defense (DOD) agencies, as well as the Department of State, General Services Administration (GSA), Environmental Protection Agency (EPA), Department of Transportation (DOT) and other civilian agencies. He has managed claims before the United States Court of Federal Claims (“COFC”), and the Armed Services Board of Contract Appeals (“ASBCA”). Mr. Sweatt has a broad background that covers many facets of government contracting, with particular focus on ethics and compliance issues, small business, and contract administration and interpretation issues. He has significant audit experience with the Defense Contract Audit Agency (DCAA), Defense Contract Management Agency (DCMA), Department of Labor, and various state audit agencies. Mr. Sweatt is a Certified Ethics and Compliance Professional (CCEP).

Mr. Sweatt has published numerous articles in the National Contract Management Association’s Contract Management Magazine, related to contract management, compliance and ethics, with a particular focus on Government Contracting.

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Brian P. Cruz is a senior associate in the law firm’s Government Contracts & Disputes practice and is located in the Los Angeles office. He focuses his practice on all aspects of government contract law, including the Truth in Negotiations Act (TINA), the False Claims Act (FCA), internal investigations and federal and state bid protests. Mr. Cruz has worked to resolve contract claims and disputes involving defense contractors, construction companies and design/build firms involved in various Iraqi/Afghani reconstruction projects in support of “Operation Enduring Freedom” (OEF) and “Operation Iraqi Freedom” (OIF). Mr. Cruz has extensively counseled clients with obtaining and/or preventing the release of information under federal and state Freedom of Information Act provisions (FOIA), and has provided guidance on issues involving Compliance Programs, Subcontractor Management, and the Department of Defense Voluntary Disclosure Program.

Mr. Cruz regularly represents government contractors in bid protests before the Government Accountability Office (GAO) and the Court of Federal Claims (COFC). He currently represents government contractors in their pursuit of Award Fee, construction and termination claims and has successfully defended a contractor against charges of procurement fraud with a damages claim estimate of approximately one hundred million dollars. Mr. Cruz also conducts internal investigations, and defends clients under investigation by the federal government for violations of various federal statutes and regulations, including the False Claims Act, TINA, FCPA, and export control laws and regulations.

Prior to joining Pillsbury, Mr. Cruz served eight years as a Communications Officer with the United States Marine Corps, including a tour to the Persian Gulf with the 13th Marine Expeditionary Unit (Special Operations Capable). He also has extensive business experience as a Department Manager with Cintas Corporation. While in law school, Mr. Cruz interned with the legal department of British Petroleum (BP America, Inc.) and worked for the litigation, real estate, and environmental law practice groups in support of Downstream (Refining & Retail) Operations.