Way back in the earliest of articles on this site, we **reported** that the FAR was revised to incorporate an interim rule prohibiting the Federal government from awarding a contract to an "inverted corporation". As we noted six years ago—

As defined in the rule, an inverted corporation is one that 'that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country.'

On July 2, 2015 – six years later – the FAR was **revised** to implement a final rule that continues the interim rule. As the promulgating comments explained—

DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to address the continuing Governmentwide statutory prohibition on the use of appropriated (or otherwise made available) funds for contracts with any foreign incorporated entity that is an inverted domestic corporation or any subsidiary of such entity.

Thus, the **interim rule** published on December 14, 2014, was adopted as a final rule without change.

What's all this about? Well, promulgating comments on the interim rule explain that Congress has been driving the annual rule-making exercise, and has been doing so since 2008. The comments explained—

The prohibition on contracting with inverted domestic corporations is addressed at FAR 9.108. In the years since the Governmentwide prohibition was first enacted in FY 2008, the FAR Council has sought to update this FAR section to reflect the enactment of new appropriations acts. …

Insofar as Congress has retained the statutory prohibition in place since FY 2008, this interim rule amends FAR 9.108-2, 9.108-3, and 9.108-5 to reflect the ongoing nature of the prohibition for as long as Congress extends the prohibition in its current form through subsequent appropriations action (in full-year appropriations acts and in short-term and full-year CRs).

In other words, the FAR Councils got tired of waiting for the annual public law prohibition which lead to an annual regulatory update exercise, and decided to make the change permanent. That makes sense to us.

In addition, on the same day the solicitation provision (contractor representation) was **changed** to reflect the requirements of the final rule. Notably, a contractor is now required to certify that it is not an inverted corporation in its proposal – and to notify the Contracting Officer if it becomes an inverted corporation during contract performance.

One public comment was received in response to the issuance of the rule, and the comment had little, if anything, to do with the rule itself. The commenter objected to "a particular contract" which was alleged to be "in violation of Federal law, because the contractor merged with a corporation outside the United States," The response to that comment was that "The Councils are not enforcement agencies, and are not in a position to assess whether the merger of two companies resulted in an entity that meets all the criteria in the applicable definition of 'inverted domestic corporation.'"

In other words, a contractor is now required to notify the cognizant Contracting Officer if it becomes an inverted corporation during contract performance. It is up to the Contracting Officer (acting in conjunction with advice from agency legal counsel, we presume) to remedy any statutory violations. If the contractor fails to notify the CO as required, then it has breached its contract and, again, the Government has remedies available. As readers know, the Government (acting *sua sponte* or via a *qui tam* relator) may allege violations of the False Claims Act under the implied certification theory when there is a contract breach. Regardless of the outcome, that's going to be an expensive matter for the contractor.

In sum, the rule is simple: don't be an inverted corporation and expect to contract with the Federal government. In practice—as this series of rulemaking exercises shows—it's more complicated than it might seem at first glance.