

Shomari: This podcast episode reflects the opinions of the hosts and guests and not of Greenberg Traurig, LLP. This episode is presented for informational purposes only, and it is not intended to be construed or used as general legal advice nor a solicitation of any type.

I'm excited to dive into today's conversation with my colleagues, Elle Ross and Tim McLister. We just wrapped up our inaugural GT Small Business [00:00:30] Federal Contract Symposium, co-hosted with the Metro Maryland chapter of the National Contract Management Association, and it was fantastic. Great turnout, really engaging discussions, and it reinforced something we see every day. There has never been more scrutiny than there is now on small business federal contractors. From regulatory challenges to suspensions, to cybersecurity requirements, to changes in the M&A landscape, there is so much happening in this space.

Let me introduce my esteemed guest, Elle Ross, advises [00:01:00] government contractors from a wide range of industries and regulatory matters, including compliance with government regulations, contract disputes, defensive claims, and government investigations. Elle provides strategic and practical advice to clients on federal contract compliance obligations, particularly in connection with the cybersecurity, supply chain risk management, and privacy, including compliance with FAR, CFR, and CMMC program and FedRAMP.

Tim McLister represents domestic and international businesses [00:01:30] in all facets of government contract transactional matters. In addition to arguing bid protest and advising clients and small business initiatives and classified contracting. Prior to joining GT, Tim served as an active duty captain in the US Army JAG Corps, where he represented the Army in this litigation and procurement strategy.

Tim and Elle, you guys are rising stars here at GT, and thank you again for your time for this podcast, as well as your participation in the inaugural GT Small Business Symposium. [00:02:00] So let's get it kicked off. Elle, we'll start with you. It's only been a year of this administration, but we've seen some really significant regulatory changes for federal contractors. Where have you seen those changes and which ones are particularly impactful for our small business community?

Elle Ross: Yeah, thanks, Shomari. Thank you so much for having me, and I'm really happy to be here. As you mentioned, there's definitely a lot going on in this space, and I think there has been a lot of movement in areas that kind of have an inordinate [00:02:30] impact on small businesses. And I think one of the things that we're seeing is just with so much change and things feeling like they're constantly moving in flux, it's really hard for small businesses to navigate those regulatory changes and stay on top of managing their expectations and obligations from their contracts.

For me, I think some of the biggest areas that I've seen that are impacting small businesses are obviously the Cybersecurity Maturity [00:03:00] Model Certification program being rolled out that's now effective and will require essentially every company that's doing business with DOD to certify and attest and conduct self-assessments of their compliance with certain cybersecurity scores. And even if the company isn't handling particularly sensitive information or sensitive contracts, they're still going to have to do some subset of that assessment and then make an annual attestation [00:03:30] that they are constantly and continuously implementing these security controls against their information systems and networks. And again, I think when we think about the impact on small businesses, it's hard for those companies to give someone that responsibility or add that task to a very lengthy list of expectations for existing roles and personnel. And it's going to be interesting to see how some of DOD's initiatives [00:04:00] are either going to help or potentially hinder small businesses in their implementation.

One thing that I was on the positive side, happy to see, and this year's NDAA is Project Spectrum is being turned into sort of statutory place for small businesses to get resources and learn about cybersecurity and ITAR and information protection obligations and have resources to help implement their [00:04:30] requirements under those obligations. And so I hope that that ends up being helpful for small businesses and certainly it's nice to see that DOD is investing in making those resources available to small businesses.

In terms of other big changes, I think the FAR rewrite or the revolutionary FAR overhaul, that process that's occurring right now is certainly, again, going to have an outsized impact on small businesses because they are going to have to be paying [00:05:00] attention to the changes and making sure that they are staying up to date with the provisions. I think the rewrite is being put forth as sort of a streamlining and a simplification, but until people become kind of familiar with what's been moved into guidance and sort of what has been taken out of the regulation and where things have been streamlined, it's still going to be a bit of a learning curve in terms of understanding what obligations apply and what procurements and how things are going to be conducted.

And [00:05:30] something that is definitely front of mind, I think for me as good protest and claims litigator is there will be impacts to sort of the rights and remedies that companies have as things that have typically or traditionally been within the regulation are moved to guidance because that impacts how companies can recover for, quote-unquote, violations because there's a different standard for when something is violation of a regulation as opposed to internal guidance. And so I think that that [00:06:00] type of change is going to be something that companies are going to have to be alert to and just making sure that they understand what rights and remedies they will have with these new overhauled FAR provisions.

I think supply chain exclusions continue to be a hot area that all companies really need to be paying attention to in particularly small businesses. We're seeing a continued emphasis on decreasing reliance on Russia, China, North Korea and Iran, but also just in general on decreasing [00:06:30] reliance on foreign sources for key articles and elements and critical materials. And so I think companies really do have to be sort of thoughtful and proactive about understanding who is in their supply chain, where those products and services are coming from, and just making sure that they're paying attention to any potential pitfalls there with, in particular, I think Chinese companies.

Shomari:

Thanks, Elle. I think you nailed it irrespective of if you're a large multinational [00:07:00] contractor or someone starting out in a small shop or garage, some of these compliance obligations are the same. And so you have to be mindful of what you're bidding on to the extent there are CMMC requirements where you're procuring from, because to your point, irrespective of the change administration, there's certainly been a bipartisan push toward securing the supply chain. So I think that's a great point. And unfortunately for small business contractors, all it takes is one False Claims Act, one investigation, [00:07:30] one slip up, and it could really derail the success of a company, which is why we always preach compliance.

And just to add to your great points, the 8(a) program's certainly been in scrutiny. Since we've had this small business symposium, the administration announced the SBA 8(a) audit, which of course is due later this month. So there's been getting a lot of scrutiny as well as the announcement that DOD will be also scrutinizing all 8(a) awards and sort of moving [00:08:00] toward an enhanced model of what will be within 8(a) program. So again, this sort of goes to the point of, hey, this is a time of opportunity, but also scrutiny for small business contractors.

Can you talk a little bit more about CMMC? This has been in the news a lot, so a lot of confusion. It was certainly a topic of a lot of conversation at the symposium. What are the compliance obligations, timeliness requirements, and what's the big need to know if you're a small business contractor looking at this [00:08:30] new regulatory regime?

Elle Ross:

Yeah, absolutely. CMMC is certainly an area of focus. And as you mentioned, very bipartisan support for strengthening the defense industrial basis cybersecurity. And CMMC actually started with President Trump's first administration. And so I expect that this will be a continued area of focus for him and his team as they look to kind of revamp DOD acquisitions. I think cybersecurity [00:09:00] is still going to be a very important focus of that and the CMMC program is going to be a really key aspect of that. I think one of the positive things about the CMMC program kind of being in effect now and the phased rollout having started is that companies can have a little bit more certainty about what the expectations are and what they actually need to do.

So the way that CMMC is set up is it's divided into three levels, level one, level two, and level three, [00:09:30] which are based on the type of information that a company receives. So if a company is getting federal contract information, they're set at the level one status, and that requires a company to be compliant with about 17 cybersecurity controls that come from NIST Special Publication 800-171. These are also the cybersecurity controls that have been required under the FAR basic safeguarding provision, 52. [00:10:00] 204-21, that FAR clause for several years now. If a company has CUI or controlled unclassified information, which again is a type of non-public government information that is marked and identified as CUI, then a company needs to be fully compliant with all 110 controls in the NIST Publication 800-171.

For some programs that are more sensitive [00:10:30] and have kind of specialty CUI, there will eventually be a rollout of level three, which will require a company to be compliant, not just with the 110 controls in 800-171, but also 24 controls from 800-172, which is just advanced cybersecurity controls. The phased rollout is intended to start kind of with rolling out the level one and level two self-certifications, [00:11:00] and we're already seeing those come out in solicitations that DOD is issuing now. So CMMC is very much happening, it's coming out in solicitations and it is an expectation.

Starting at the end of this year and going into next year, there will be an increased number of requirements for third party self-assessment as opposed to the self-assessment certifications. And this will just require companies to go out and have an approved assessor organization [00:11:30] come in and just check their assessment and make sure that they are in fact implementing all of the controls on their systems. The three main requirements are to conduct that assessment against the applicable controls, depending on the CMMC level that applies to you, report that score or make sure that your assessor organization is reporting that score for you.

And then every year, a senior company official with responsibility for ensuring [00:12:00] compliance with CMMC is going to have to attest that the company continues to be in compliance with those controls. So for the level two and level three, you don't need to do an assessment every year, but you will have that annual attestation requirement. And this just makes it easier. I mean, we mentioned the False Claims Act for the attestation and the sort of formal representation of compliance makes it easier for the government in the event that they feel like a company is not actually complying with the controls [00:12:30] to point to that attestation as a false statement that's being made to the government.

I think opportunities to challenge CMMC are pretty limited. I know that there have been some activity on sort of Administrative Procedure Act challenges and everything, but this program has gone through formal rulemaking process, it's been subject to notice and comment rulemaking on multiple occasions. And I think procedurally, again, has spanned both the Republican and Democratic

administrations [00:13:00] and I think there's just pretty broad support in government for a program of this type. And because of that, it also makes it a little bit harder to challenge the application of those requirements to a specific solicitation.

If you see a CMMC level two third party certification requirement, it's going to be very difficult to show that that requirement is unreasonable if that contract involves CUI. And that's because the government is concerned about [00:13:30] security, we're all aware of numerous instances of very public and very scary breaches of Department of Defense systems and government systems in general. And it's really well documented the need for increasing cybersecurity. And so while certainly I don't want to be dismissive of the costs of implementing CMMC, it really is important that we [00:14:00] strengthen our defense industrial base and make sure that we're not subjecting companies or government agencies to loss of information that could be prevented by just having some of these cybersecurity controls in place.

I think my best advice, and particularly for small businesses, is CMMC is here, it's not likely to be going away and it will be coming out in your solicitations. I think the best thing that companies can do is prepare now, start to get ahead, even if you're not seeing sort [00:14:30] of third party assessment requirements in your solicitations. I really think those are going to be coming next year. You might as well get in line. Many companies are booked for three to six months, many of the assessor organizations are already booked for three to six months out. So it really behooves companies to be very proactive in preparing for and getting those assessments conducted ahead of when you see it in a solicitation because by then it'll likely be too late.

Shomari: Thanks, Elle. That's great advice, particularly about preparing [00:15:00] ahead of time, being methodical in terms of how the small businesses approach these new requirements in the solicitations. Because to your point, to the extent there's misrepresentation or you're kind of get ahead of your skis, there are certainly some serious consequences. And so very helpful dive in CMMC and then sort of the new normal there.

Last question, we'll turn it over to Tim, what other areas are you seeing increased enforcement claims within, particularly for small businesses?

Elle Ross: [00:15:30] Yeah, that's a great question. Obviously we have the Civil Cyber Fraud Initiative and that is still a very active task force. One of the things that we're seeing is as DOJ or other government agencies are issuing subpoenas or requests for information or civil investigative demands, they're attaching cybersecurity questions even when sort of the underlying investigation hasn't been focused on that area because it's such an easy area to catch people out in. And so [00:16:00] we're seeing a lot of use of questions and subpoenas and demands in that area to try to get at cybersecurity information and the potential there.

I think even outside of cybersecurity, information protection is just really a hot area. So that's export controls. We saw some big settlements last year with companies that you would think would know better in this area, and it certainly is not limited there. The government is very concerned, not [00:16:30] just with sort of tech exports to foreign countries, but release of technical information to foreign nationals inside the US, that's also considered an export. And I think a lot of small companies can get caught up in that area and we've seen a couple of settlements to that effect recently.

I definitely think cost accounting, this administration is extremely focused on waste and abuse and making sure that federal funds are being spent [00:17:00] and expended appropriately. And so they're certainly increasing reviews of contract spending and documentation surrounding expenditures, particularly in cost reimbursable contracts. So companies really should be alert to ensuring that they're retaining documentation, that they can easily find it, and that their cost systems are appropriately categorizing information so that they don't get caught up at anything.

On January 8th, President Trump announced, [00:17:30] well, I think Vice President Vance actually announced it, but there was a fact sheet from the White House on a new division and DOJ for national fraud enforcement. It's actually going to be run out of the White House and the head of that enforcement division is going to report directly to the President and the Vice President. That's a very unique reporting structure, and I think it just goes to show the emphasis that this administration is placing on fraud enforcement. And in particular, [00:18:00] the focus of that division is on enforcing criminal and civil laws against fraud targeting federal government programs and federally funded benefits and that's for businesses, nonprofits, and private citizens.

I certainly expect that the emphasis on cost controls, information protection, cybersecurity exports, DE&I, diversity, equity and inclusion initiatives, I mean, those are all going to be subject to scrutiny, I think with this new [00:18:30] enforcement division, as well as in the priorities that President Trump has outlined for existing DOJ enforcement. And unfortunately, I think small businesses tend to be seen as low hanging fruit for some of those areas because they don't necessarily have the amount of federal dollars and the big law teams and the in house council to be heading off investigations in this nature. And so a lot of the settlements, I think the vast majority of settlements I've seen in [00:19:00] the past year have been targeting small businesses.

Shomari:

Thanks, Elle. Yeah, I couldn't agree more. And hopefully the great thing that we as attorneys bring is that perspective and depth of experience to see what's going on in the market. Usually small businesses or all businesses are kind of focused on each quarter and business capture and the like. But to your point, it's important to keep in mind that government contracts, and particularly this environment is heavily scrutinized. And in my experience too, I say take a long

view because [00:19:30] some of the 2020 loans that people think are sort of out of the news are being scrutinized just the same. So what's going on in this environment will maybe be scrutinized in the 2030s, which is kind of crazy to think about. But again, to your point, it's important to take a long view and make sure that everything, all your compliance obligations are really buttoned up.

Tim, let's pivot to you. The M&A activity and government contracts has been really active this past year, and I'm sure [00:20:00] 2026. In your view, what's driving small business contractors to consider M&A transactions right now?

Tim McLister: Thanks, Shomari. Happy to be here to touch on this. What we've seen this past year is there's been steady deal flow. This is even probably one of the most uncertain years that I've been practicing law with the Department of Government Efficiency coming in, scrutinizing contracts, we have the overhaul of the federal acquisition regulation, the longest government shutdown in history, and now just recently [00:20:30] the audit of the 8(a) program, and despite all that, we're still seeing heavy deal flow right now. And reasons because you got the largest buyer of goods and services in the world, you have a transparent public budget and a steady revenue stream that's predictable. We also see competitive market with large contract vehicles. They're favoring companies with broader capabilities, necessary past performance, and M&A is often the fastest way to get from point A to point B. [00:21:00] And lastly, we're seeing small businesses approaching their SBA size standards, which are typically reviewed and changed every five years, but we're seeing transactions happen when small businesses are approaching their size threshold.

Shomari: Thanks, Tim. I couldn't agree more. We started 2025 focused generally on the new small business M&A regulations that came out. And then to your point, DOGE happened and the shutdown happened and everything else happened. But a lot of times on the small business side, someone's [00:21:30] greatest asset as a company, look, it's still looking to sell. And other times, if you're going to be invested in the space when others are scared, you kind of get greedy. So we definitely saw some folks interested on the buyer side as well. But it's not just that. It's also, to Elle's earlier point, compliance. And so what are some of the unique diligence issues that come up in the government contract M&A deal that may not exist in other industries or sectors?

Tim McLister: Yeah, that's a good question. And I think the GovCon M&A [00:22:00] market, it's very unique because of the complex regulatory environment, which is evolving frequently. You have to dig into the compliance with the federal acquisition regulation, the SBA's regulation. And because this issue can jeopardize the targets contracts or size status. So really digging into the weeds, making sure that a company on the buy side, sell side is diligence properly is critical to a transaction. And set-aside eligibility is a big one. Affiliation, looking at affiliation, SBA looks at roughly [00:22:30] 10 factors to determine whether there is affiliation. And if there is, whether you aggregate the receipts or the

employees of that affiliate to determine whether a small business contractor is eligible for that contract or opportunity.

Size recertification is a big issue. This about a year ago, the SBA came out with a new regulation about size recertification applicable to multiple award contracts. As industry moves towards these large contract vehicles, the SBA realized that, hey, there's a lot of private equity entering [00:23:00] the market, gobbling up the small business contractors and running out the life of that contract and competing against the ones that did not enter into a transaction. So kind of under the principles of fairness, level the playing field with respect to multiple award contracts. So really diligencing size, recertification under those contracts. Hey, have you been representing yourself the right size at the right time to avoid any false claims act, liability, potential in the future, and ownership structure [00:23:30] when you're dealing with small business categories such as service disabled veteran small business or women-owned small business, whether there's the right ownership control structure in place to make sure you're in compliance with those regulatory requirements.

And on the contract side, looking at what pre-closing consents required, were post-closing notices, digging into the subcontracts, seeing novation risk as if it's a asset purchase, a suspension department, contract terminations have [00:24:00] been a big issue, obviously because the Department of Government Efficiency, making sure that no contracts have been terminated for convenience or they don't expect future contracts to be terminated. And then in addition, looking for facility clearance requirements, making sure that they're compliant with the DCSA regulations with the NISPOM and personal security clearances and avoid any unlawful foreign ownership and control or influence.

And lastly, a big button issue is, as Elle discussed, [00:24:30] the CMMC. Where are they in the CMMC timeline? Are you level one? Are you compliant with level one? Okay. If you do work with DOD, where are you with respect to level two going forward and making sure that you are in the pipeline with a C3PAO to make sure that you are looking for those opportunities in the future and being compliant with the necessary level of certification?

Shomari:

Thanks, Tim. You made some great points and to your broader point, there's [00:25:00] no greater deal killer than some significant non-compliance that the other side finds in a data room. So it's important also to have that robust ethics policy and compliance policy in place to the extent that when the buyer comes in, they could address some of those concerns pretty quickly. Switching perspectives on the buyer side, what are some key considerations for small business government contractors seeking growth through acquisitions, particularly in this environment?

Tim McLister:

Yeah. The big issue is how will a transaction impact your size [00:25:30] standards? How much are you reliant on your small business set-aside contracts is really the big button issue. And that's why most small business contractors



that are looking to sell in the near term have a healthy dose of small business set-aside contracts, but also some full and open work to minimize any risk going forward too. Minority investment is also a potential issue here. We've seen a lot of that in the marketplace right now. You really want to avoid affiliation [00:26:00] though.

And so kind of crafting those agreements to make sure that there is no control which would dictate affiliation of a small business contractor is a hot button issue. And this past year, the SBA recertification rule had an exception for small business to small business transactions. As I touched on, they realized that, hey, we have these large private equity firms that are in the marketplace and gobbling up small business contractors, but now there's an exception for small [00:26:30] business to small business transactions, making them eligible for task orders under multiple award contract vehicles, which is an interesting issue that I think small business contractors should know going forward.

Buyers look for companies with valuable set-aside status often as well, SCVOSB, HUBZone paired with incumbent positions on programs that are stable, funded, likely to be re-competed in their favor. Contract vehicles are a focus [00:27:00] looking at OASIS+, Alliant 3, T4NG2, you name it, these large government contract vehicles, in order to stay competitive, small business contractors, you have to be on those vehicles. Clearances matter too. A company with a granite facility clearance and a clear workforce involving transaction requires coordination with DCSA, which is the agency that oversees the NISPOM or 32 CFR 117, make sure that they're in compliance with safeguarding [00:27:30] classified information. In the context of a transaction, DCSA reviews foreign ownership control or influence to make sure that there's proper mitigation measures that are in place to protect disclosure of classified information. And best targets offer a combination of set aside advantages, sticky revenue, contract vehicles, strong performance, and low compliance risk.

Shomari:

Thanks, Tim. Again, couldn't agree more. I think that's some really great insight. And it'll be interesting too as the government rolls out the new RFO, [00:28:00] how some of that will sort of come in, including, to your point about the key IDIQs, there's a lot of push toward GSA now and mandatory best in class vehicles. So teaming agreements will have to be really tight, making sure the small business contractors are on the right vehicles and just adjusting to the new normal one, being nimble. So again, great insight. Again, really appreciate it.

Okay. Elle and Tim, thank you so much for that great insight. I loved hearing your [00:28:30] experience and what you're seeing in the market. And again, I think it's so invaluable too for small business contracts. I think Elliot pointed this out that they typically wear so many hats. You don't have a large in house counsel office or big compliance team. And so you have to juggle a lot while still focusing on contract performance, business capture strategy, compliance, invoicing, all that. And so I think again, from the perspective of the

legal/compliance side, it's really [00:29:00] invaluable for us to say, "Hey, here's what we're seeing in the market."

So just to sort of recap, if you, Tim and Elle, could identify maybe one or two practical takeaways from both the GTE Small Business Symposium and what potentially should these same companies be in the lookout for moving forward in the new normal with the NDA and the RFO.

Tim, I'll flip it, and I'll start with you first and then we could wrap up with Elle.

Tim McLister: Thanks, Shomari. Yeah. A couple key [00:29:30] takeaways that I would advise is number one, maybe do a sanity check on your type of company, sit down and think strategically, "Hey, this is where we are right now. This is where we want to go and how we go about that." And there are a couple different avenues. One, you sell to a strategic or a larger company. Two, you look to acquire a smaller company under the small business exception that I noted earlier. Or three, you look at maybe taking on [00:30:00] minority investment, and those are all general avenues to help you get to where you want to go. Each of those avenues has some pros and cons to it. And so doing a sanity check on each of those, I think would be important.

Kind of in line with that is if you're looking to sell, it's looking at the type of company that you're potentially selling to is very important now given the recertification models. I think we're going to see a whole lot of super 8(a) activity this year [00:30:30] going forward more so than in the past. And that's because of size recertification rules here. So that's just a touchpoint that I would focus on. Thanks.

Shomari: Elle, what are your thoughts?

Elle Ross: Yeah, I think for me, I would just encourage companies and small businesses to pay attention as much as they can to the changes that are happening and making sure that they are, I think Tim made a great point, thinking strategically about what's going on in government contracting, how it's going to affect their programs [00:31:00] and their type of business and the contracts that they've sort of historically gone after and how it fits into their broader strategic goals as a company. And I think that's important because for things like CMMC, you need to be proactive and you need to be thinking not just what do I need right now for the next solicitation that's coming out, but what do I need to have in place so I'm ready for the solicitation after that? And so I think being thoughtful and proactive about [00:31:30] your customers and your goals and how those align with your compliance obligations is really important and it can help you scope those obligations too so that you're not taking on more than you need to.

The other thing that I think is beneficial about being proactive and thoughtful about it is that if you do identify a mistake or if you do realize that there has been a non-compliance or something didn't go quite right, you can get ahead of

it. It's really important [00:32:00] in today's enforcement landscape and with the sort of incorporate enforcement guidance that's coming out of DOJ for companies to be making voluntary self-disclosures when they can. And so if you are being proactive and if you're being thoughtful and you are catching things on your end, that is always a much, much better position to be in than finding out about it from a whistleblower or an upset employee or a civil investigative demand down the road.

Shomari: [00:32:30] Speaking from experience, so that's great. Well, I think that's a great way to wrap up. We'll have no shortage of topics and interesting developments for next year's GT Small Business Symposium. So Elle, Tim, thank you so much again for your time today, as well as lending your expertise in the symposium. Thank you to the listeners as well.