



Weekly Report for November 30, 2018

RULES AND REGULATIONS

The Department of Veterans Affairs (VA) issued a proposed rule on November 29, 2018 proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the FAR. It will also remove procedural guidance that is internal to the VA, move it to the VA Acquisition Manual, and incorporate new agency-specific regulations or policies. The proposed rule would also add VAAR coverage concerning Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace; Other Socioeconomic Programs; and Contract Modifications. [83 Fed. Reg. 230, 61365](#).

GOVERNMENT CONTRACTING

The Government Accountability Office (GAO) issued its annual bid protest report to Congress. Notably, nearly half of all protesters obtained some form of relief. Specifically, the GAO reported an effectiveness rate of 44%, and the number of protests filed in 2018 generally remained the same. You may view the report [here](#).

The Department of Defense (DoD) issued a class deviation for fixed-price contracts requiring contracting officers to first consider the use of fixed-price contracts in determining contract type. The class deviation also prohibited contracting officers from awarding two categories of cost-type contracts (i.e. cost-reimbursement contracts in excess of \$50 million awarded after October 1, 2018 and before October 1, 2019, and cost-reimbursement contracts in excess of \$25 million awarded on or after October 1, 2019) unless the contract is approved by the head of the contracting activity. More information can be found [here](#).

The General Services Administration announced that it will consolidate 24 Multiple Award Schedules into one single schedule for products and services. This consolidation is part of the GSA's Federal Marketplace strategy, which seeks to make the government buying and selling experience easy, efficient, and modern. The move also supports the GSA's goal of establishing the agency as the premier provider of "efficient and effective acquisition solutions across the government." View the Federal Times article [here](#).

Five officials from Explo Systems, Inc. (ESI) were sentenced for their roles in a criminal conspiracy that used Camp Minden, located in Louisiana, as an illegal dumping ground for military explosives. - ESI received an \$8.6 million contract from the U.S. Army to demilitarize approximately 1.35 million propelling charges containing M6 propellant, an explosive. ESI was also required to store the propelling charges and handle final disposition of the explosives. It had represented that it would sell and reuse the M6 propellant. However, the officials defrauded the U.S. by submitting false certificates to the U.S. Army, transporting hazardous waste to unpermitted facilities, improperly storing the explosives, and submitting false certificates that the propellant had been sold, though no sales occurred. More information can be found [here](#).

Patricia Pauline Driscoll, the former executive director of the Armed Forces Foundation, was found guilty of fraud and tax evasion. As executive director of the foundation, Driscoll filed false annual reports regarding her salary and benefits, falsely reported the amount of donations received by the foundation, inflated the amounts of donations, incorrectly listed the types of donations received, failed to include commissions she received from fundraising, and failed to disclose other benefits she received. She also falsely categorized

expenses in the foundation's records and concealed money she took from the charity, such as rent money for an office space she co-owned. More information can be found [here](#).

Finbar Charles, the business partner of a former U.S. military contractor, Terry Hall, was sentenced to prison for his role in a years-long scheme to bribe U.S. Army contracting officials stationed at a military base in Kuwait during the Iraq War. Charles bribed the officials in exchange for preferential treatment for Hall's companies in connection with DoD contracts to deliver bottled water and construct security fencing to support troops in Kuwait and Iraq. More information can be found [here](#).

Andrew Otero and his company, A&D General Contracting, Inc., were convicted on charges that they fraudulently obtained \$11 million in federal contracts set aside for service-disabled veteran-owned businesses (SDVOSB). Otero had no military experience but formed a joint venture with another company, Action, and then falsely represented that the joint venture qualified as an SDVOSB. More information can be found [here](#).

LABOR AND EMPLOYMENT

According to an article on Bloomberg Government, LGBT bias complaints have tripled at the Department of Labor, which is being viewed as a complement to the Equal Employment Opportunity Commission. Because two agencies within President Trump's administration are clashing over whether federal law protects lesbian, gay, bisexual, and transgender employees from discrimination, some government-contractor employees have been bringing bias complaints in the Department of Labor's Office of Federal Contract Compliance Programs.

Retailers such as Walmart, Target, and Burlington Coat Factory face litigation arising from claims that pregnant employees were put at risk on the job. Four such suits were filed against retailers in November alone, and women allege they were discriminated against due to their pregnancies and denied modifications to their jobs. In 2015, the U.S. Supreme Court held that companies that accommodate injured workers must also accommodate pregnant workers. That decision has now been cited in over 200 cases, and the number of lawsuits filed has almost doubled since 2015. In the pending cases, women allege they were made to lift heavier boxes than recommended by federal authorities and stand for long stretches, putting themselves and their babies at risk. In 2015, Professor Joan Williams at the University of California Hastings College of Law stated that the Supreme Court decision, however, now means that employers face "a sharp potential rise in legal liability . . . if you don't accommodate pregnant workers with reasonable accommodations." For example, Walmart has updated its national accommodation policy to include temporary alternative duty as a possible reasonable accommodation for pregnant employees.

The U.S. Department of Labor entered into a conciliation agreement with Oldcastle BuildingEnvelope, Inc.(Oldcastle)—a federal government contractor that supplies building materials—to resolve allegations of hiring discrimination at the company's Denver, Colorado, facility. The Department's compliance evaluation alleged that from January 21, 2013 to January 20, 2015, Oldcastle discriminated against white, black, and female applicants who applied for 8A Loader and Unloader positions in favor of Hispanic and male applicants. More information can be found [here](#).

CAPITOL HILL

Small Business Committee Chairman Chabot and Veterans' Affairs Committee Chairman Roe Introduce VA-SBA Act

On November 27, 2018, House Committee on Small Business Chairman Steve Chabot and House Committee on Veterans' Affairs Chairman Phil Roe, M.D. released statements following the introduction of a new legislation: H.R. 7169, the Verification Alignment and Service-disabled Business Adjustment ("VA-SBA") Act. The bill was introduced by Trent Kelly, who is the Chairman of the House Small Business Committee's Subcommittee on Investigations, Oversight, and Regulations. The bill states that it will transfer the

responsibility of verifying small business concerns owned and controlled by veterans or service-disabled veterans to the SBA. The text of the bill can be viewed [here](#).

Currently, SBA certifies certain small businesses that participate in federal contracting preference programs. However, SDVOSBs are the exception—they are verified by the VA to qualify for VA contracts, and are uniquely allowed to self-certify to obtain federal contracts from all other federal government agencies. In support of the bill, the press release from the House Committee on Small Business asserted that SDVOSBs' abilities to self-certify has allegedly led to years of fraud, waste, and abuse, and has allegedly allowed companies not owned by service-disabled veterans to take advantage of the system. The VA-SBA Act would require the SBA to certify all SDVOSB applications, as it does for other small businesses. The full press release can be viewed [here](#).

PILIEROMAZZA BLOGS

Avoiding Flat Tires When Acquiring IDIQ Contract Vehicles

By Cy Alba

With proposals costing hundreds of thousands of dollars and many IDIQs having 50 or more awardees, it can easily happen that some contractors who win a spot on a contract are unable to capitalize on it and simply stop trying to capture task orders. Whether it was because the initial win was based on sheer luck or perhaps because of a tragic, unforeseeable change in circumstances, making it impossible to bid or even keep the company doors open, a contractor may find itself with a shiny new license to hunt, but without the proper tools to successfully compete for and win the actual task orders. After failing to win any work for usually a year or more, contractors in situations like this may just be looking to recoup the bid and proposal costs or salvage the win. Often, they look to sell their zombie contracts to a more viable candidate. In the past, this was not too difficult, but in recent years, even months, it has become a harder and harder "sell." [\[Read More\]](#).