PILIERO MAZZA

Weekly Report for February 23, 2018

DEPARTMENT OF DEFENSE

Contractors on Board with Defense Department Budget Request

The defense contracting industry has had a positive reaction to President Donald Trump's fiscal year 2019 Defense Department budget request. The requested $686 billion for fiscal year 2019 is the largest ever request for the Pentagon. The National Defense Industrial Association (NDIA) praised the administration for recognizing a growing defense spending need in the U.S. Spokesperson for NDIA, Evamarie Socha, stated, "NDIA welcomes the president's fiscal year 2019 budget and its call for investments to rebuild our military's readiness."

On the other side of the coin, Congressional Democrats issued stinging criticism on the White House for requesting a sizeable spending hike at the same time as it has accepted massive budget deficits. Democrat Adam Smith (Smith) (Wash.) believes that, while it is important to have a budget that enables the U.S. military to defend the country and its allies in a complex threat environment, the current administration is moving in a fiscally unsound way. Smith believes that with the recent tax cuts and the current spending, the administration is setting the country up to sink into further deficits. For more information, please read the Federal Contracts Report, Vol 109, No. 7, 172 (2018).

SMALL BUSINESS ADMINISTRATION

Civil Monetary Penalties Inflation Adjustments

The Small Business Administration is amending its regulations to adjust the amount of certain civil monetary penalties that are within the jurisdiction of the agency for inflation. These adjustments comply with the requirement in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, to make annual adjustments to the penalties. 83 Fed. Reg. 7361.

VETERANS AFFAIRS DEPARTMENT

Revise and Streamline VA Acquisition Regulation To Adhere to Federal Acquisition Regulation Principles (VAAR Case 2014-V002)

The Department of Veterans Affairs (VA) adopts as final the proposed amendments to VA regulations. This rulemaking prescribes five new Economic Price Adjustment clauses for firm-fixed-price contracts, identifies VA's task-order and delivery-order ombudsman, clarifies the nature and use of consignment agreements, adds policy coverage on bond premium adjustments and insurance under fixed-price contracts, and provides for indemnification of contractors for medical research or development contracts. This document adopts the proposed rule published on March 13, 2017, as a final rule, with five technical non-substantive changes. 83 Fed. Reg. 7401.

U.S. SUPREME COURT

Supreme Court Narrows Definition Of Whistleblower

The U.S. Supreme Court on Wednesday ruled in favor of a narrow definition of the term "whistleblower," a decision that will significantly limit the scope of anti-retaliation measures meant to protect whistleblowers under the Dodd-Frank Act. The court unanimously ruled that a federal law protecting whistle-blowers in securities cases must be read narrowly to bar many retaliation suits from people who say they were fired for reporting wrongdoing. “The plain words of the law, part of the Dodd-Frank Act, required that conclusion,” Justice Ruth Bader Ginsburg wrote.

The law defined “whistle-blower” to mean “an individual who provides information relating to a violation of the securities laws” to the Securities and Exchange Commission. That language excluded people who merely reported wrongdoing to their employers, Justice Ginsburg wrote. Read the full opinion here.

LABOR AND EMPLOYMENT

Companies May Find High Court Whistleblower Ruling Costly

A U.S. Supreme Court ruling February 21, 2018, narrowing the scope of anti-retaliation protections for corporate whistleblowers could lead to a significant increase in the number of complaints filed directly with the U.S. Securities and Exchange Commission, a result companies may find costly. The high court’s decision in *Digital Realty Trust Inc. v. Paul Somers* found that employees who bring securities law complaints against their companies must first take their allegations to the SEC, rather than filing their complaints internally, to be protected by anti-retaliation measures afforded under the Dodd-Frank Act. By narrowing the definition to whistleblowers who take their allegations “to the commission,” the high court excluded from Dodd-Frank protections employees who report internally, a much larger group than those who first take their complaints to the SEC.

CAPITOL HILL

House Small Business Committee Hearing

On Tuesday, February 27, 2018 at 10:00 a.m., the U.S. House Committee on Small Business Subcommittee on Economic Growth, Tax, and Capital Access is scheduled to hold a hearing titled “Occupational Hazards: How Excessive Licensing Hurts Small Business.” Representatives of the R Street Institute, the National Association for the Self-Employed, and the Professional Beauty Association are expected to testify. Live video coverage of the hearing will be available here.

PILIEROMAZZA BLOGS

SBA’s Office of Hearings and Appeals Clarifies the (Not So Obvious) Effect of Size and Status Recertifications

By Isaias Alba IV and Samuel S. Finnerty

In a recent case with wide-ranging implications, the Small Business Administration’s Office of Hearings and Appeals confirmed the broad nature of SBA’s general rule that a contractor maintains its size and socio-economic status for the life of a contract. As a quick primer, SBA regulations provide that, where a concern represented itself and qualified as small and/or for a certain socio-

economic status (e.g., SDVOSB, HUBZone, EDWOSB/WOSB) at the time of its initial offer, it maintains that status throughout the life of the contract. This means that if a concern is small and/or of a certain socio-economic status at the time of its initial offer for a Multiple Award Contract, then it will be considered such for each order issued under the contract. The clear exception to this rule occurs where the contracting officer requests a new size and/or status certification in connection with a specific order, in which case status will be determined as of the date of the initial offer for the order. Although this seems simple enough, it has been argued that other forms of recertification (i.e., those not made in connection with a specific order) can disqualify a concern from being eligible to compete for set-aside orders. Read the article at http://www.pilieromazza.com/blog