



Weekly Report for July 13, 2018

DEFENSE DEPARTMENT

To Streamline Acquisitions, 809 Panel Presses Department of Defense to Adopt Portfolio Management

According to an article on federalnewsradio.com, the congressionally-mandated panel in charge of finding ways to streamline the Defense acquisition system called on June 28, 2018 for dramatic changes in how DoD organizes itself to define requirements for weapons systems and manage its procurement budgets, saying DoD must move to a “portfolio-centric” approach to procuring military equipment. In the second volume of its report to Congress, the Section 809 Panel said the Pentagon’s current decision making and incentive structures are far too focused on individual weapons programs, not on broader portfolios of capabilities. In a related problem, the panel said the three broader communities within DoD that are in charge of deciding what to buy, prioritizing funding for those systems, and actually conducting procurements, are too siloed to make the agile decisions needed to deliver military capabilities that are relevant to the modern battlefield.

WHITE HOUSE

Senators Look to Give Trump Authority to Reform and Reorganize Government

According to an article in govexec.com, Republican lawmakers have introduced legislation to give President Trump increased authority to reorganize the government as he sees fit, including consolidating, transferring, abolishing or creating agencies. The 2018 Reforming Government Act seeks to start the process for Trump to implement the proposals the White House unveiled last week in its reorganization plan, which included 32 distinct recommendations for reshaping an array of federal agencies. Congress has not granted a president reorganization authority since 1984, though President Carter was the last to actually use the power. The measure would not give the White House *carte blanche* to start implementing Trump’s proposed reforms. Instead, it would provide a pathway for those recommendations to go before Congress for consideration. Trump would still need to send his formal proposals to lawmakers, who would then have 90 days to approve them. If they took no action, the plans would not advance. The president would have two years to officially send his suggestions to Congress.

Evaluation of Department of Defense Hotline Complaint Regarding Defense Contract Management Agency Baltimore’s Actions on Audit Findings Reported by Defense Contract Audit Agency

According to an article in dodig.mil, DoD evaluated a Defense Hotline complaint alleging that a Defense Contract Management Agency contracting officer at the Baltimore Field office did not take appropriate action on a Defense Contract Audit Agency Audit Report which identified \$1.1 million in indirect costs that did not comply with the Federal Acquisition Regulation.

LABOR AND EMPLOYMENT

Pacific Bell Settles Disability Discrimination Lawsuit with EEOC

According to an article on natlawreview.com, Pacific Bell Telephone Company, formerly known as AT&T Pacific Bell, will pay \$15,000 and furnish other relief to settle a disability discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced. According to the

EEOC's lawsuit, Pacific Bell violated federal law when it did not effectively accommodate a deaf employee at its Fresno, California location. Despite the employee's numerous requests for a sign language interpreter, managers chose to provide inadequate accommodations for the worker by standing close to him during meetings so he could read their lips, or by jotting down notes explaining the contents of the meeting after the fact. The EEOC contends that such behavior deprived the worker of equal employment opportunities, privileges, and benefits of employment, which negatively affected him as an employee.

OFFICE OF PERSONNEL MANAGEMENT

Thousands of Feds Would Get Raises under OPM's Locality Pay Proposal

According to an article on govexec.com, around 62,000 federal employees could see a pay raise next year, thanks to proposed regulations from the Office of Personnel Management (OPM). OPM Director Jeff Pon published a proposal in the Federal Register to add four regions to its list of locality pay areas for 2019: Birmingham-Hoover-Talladega, AL.; Burlington-South Burlington, VT.; San Antonio-New Braunfels-Pearsall, TX; and Virginia Beach, VA. The proposed rule would mark the first implementation of recommendations from the Federal Salary Council since President Trump took office. The council had recommended the four regions be added in 2016 and 2017, but last December, the President's Pay Agent delayed action on those proposals until 2019.

CAPITOL HILL

Senate Veterans Affairs Committee Votes for Robert Wilkie to lead Department of Veterans Affairs

On July 10, 2018, the Senate Committee on Veterans Affairs held an executive business meeting to consider the nomination of Robert Wilkie to serve as Secretary of Veterans Affairs. The nominee was reported favorably by voice vote, with one Member (Sen. Bernie Sanders, I-VT) requesting to be recorded as voting "no." The nominee now awaits confirmation by the full Senate in order to be officially appointed by the President. Although no archived video footage exists for this executive business meeting, you can view the transcript [here](#).

Innovation Nation: How Small Businesses in the Digital Technology Industry Use Intellectual Property

On July 11, 2018, the House Small Business Committee held a hearing to examine the continuing emergence of new small businesses in the digital technology industry, and to consider ways to safeguard these businesses' intellectual property. The panel included Frank Cullen of the Global Innovation Policy Center, U.S. Chamber of Commerce, Morgan Reed of ACT | The App Association, Christopher Mohr of the Software & Information Industry Association, and Chris Israel of the Alliance for U.S. Startups & Inventors for Jobs. You can find more information about the hearing [here](#).

Achieving Government-Wide Verification of Service-Disabled Veteran-Owned Small Business

On July 17, 2018 at 2:00 p.m., the House Small Business Subcommittee on Investigations, Oversight, and Regulations, and the House Veterans' Affairs Subcommittee on Oversight and Investigations will hold a joint hearing titled "Achieving Government-Wide Verification of Service-Disabled Veteran-Owned Small Business." The intent of this hearing is to examine the joint efforts of the Veterans Affairs (VA) and Small Business Administration (SBA) to reconcile the differences between their definitions relating to service-disabled veteran-owned small businesses (SDVOSBs), consider SBA's ability to assume the responsibility of SDVOSB verification, and evaluate the benefits of extending verification of SDVOSBs government-wide. The witness panel includes Thomas J. Leney, Executive Director of Small and Veteran Business Programs with the Department of Veterans Affairs, Robb Wong, Associate Administrator of the Office of Government Contracting and Business Development at the SBA, William Gould, Senior Advisor with the Office of the Administrator at the SBA, and Davy G. Leghorn, Assistant Director of the American Legion. You can view live footage of the hearing and find more information [here](#).

Senate Moves to Start Negotiations on Defense Policy Bill

The Senate officially moved on Tuesday, July 10, 2018, to reconcile its version of the \$716 billion annual defense policy bill with the House's, approving a motion by 91-8 to go to conference. In addition to that move, senators approved two motions to instruct conferees, which are nonbinding directions to negotiators. One, approved 97-2, says Senate negotiators should work to keep in the bill reforms to the Committee on Foreign Investment in the United States (CFIUS). The other, approved by the same margin, says negotiators should reaffirm the U.S. commitment to NATO. For more information, please go [here](#).

PILIEROMAZZA BLOGS

GAO Denies Protest Based on Cybersecurity Compliance

By Jon Williams

Last month, I blogged about DoD's draft guidance on how it will evaluate cybersecurity compliance in the award of contracts. The blog is available [here](#). Based on this draft guidance indicating DoD may use cybersecurity compliance as pass/fail or best value criteria in evaluations, I concluded that bid protests would not be too far behind once DoD finalizes and implements the guidance. [\[More\]](#)

No-Poaching Agreements: You Could Be Criminally Liable

By Nichole Atallah

Earlier this year, the Department of Justice's Antitrust Division (DOJ) issued the Antitrust Guidance for Human Resource Professionals (DOJ Guidelines), which signaled for the first time that DOJ would "proceed criminally against naked wage-fixing or no-poaching agreements." "No-poaching" or wage fixing agreements are a defense against employees leaving their companies to work for competitors in tight markets. However, companies that are not careful and enter into these agreements could face substantial liability, even criminal liability. By way of example, in 2015, Google, Apple, Adobe, and Intel settled a lawsuit for \$415 million for having an agreement not to hire the others' employees. [\[More\]](#)

New and Proposed Certified Cost or Pricing Data Requirements Will Shift Burdens upon DoD Contractors

By Patrick T. Rothwell

Compliance with the requirements of the Truthful Cost or Pricing Data statute ("TCPD"), which is still commonly known as the Truth in Negotiations Act, has been a significant burden to many small business contractors. Under TCPD, federal contractors are required to submit "certified cost or pricing data" to the contracting officer prior to the award of negotiated contracts where (i) the price exceeds a specific threshold and (ii) an exception to the requirement is not applicable. If there is a significant increase in the contract price as a result of the cost or pricing data not being complete, accurate, or current as certified, the government may seek a price reduction from the contractor. [\[More\]](#)