



Weekly Report for May 4, 2018

DEPARTMENT OF DEFENSE

Defense Federal Acquisition Regulation Supplement: Amendments Related to Sources of Electronic Parts

The Department of Defense (DoD) is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement to implement a section of the National Defense Authorization Act for Fiscal Year 2016 that makes contractors and subcontractors subject to approval (as well as review and audit) by appropriate DoD officials when identifying a contractor-approved supplier of electronic parts.

[83 Fed. Reg. 87, 19641-2.](#)

Defense Federal Acquisition Regulation Supplement: Statement of Purpose for Department of Defense Acquisition

The Department of Defense is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 to revise the DFARS to include a statement of purpose. [83 Fed. Reg. 87, 19641.](#)

Defense Federal Acquisition Regulation Supplement: Promoting Voluntary Post-Award Disclosure of Defective Pricing (DFARS Case 2015-D030)

The Department of Defense (DoD) is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement to state that, in the interest of promoting voluntary contractor disclosures of defective pricing identified by the contractor after contract award, DoD contracting officers have discretion to request a limited-scope or full-scope audit, as appropriate for the circumstances. [83 Fed. Reg. 87, 19645.](#)

Federal Acquisition Regulation

The Department of Defense, General Services Administration, and NASA are issuing a final rule amending the Federal Acquisition Regulation to implement a section of the National Defense Authorization Act for Fiscal Year 2017 to:

Task- and Delivery-Order Protests

Raise the threshold for task-and delivery-order protests from \$10 million to \$25 million (applicable to DoD, NASA, and the Coast Guard). [83 Fed. Reg. 84, 19145.](#)

Duties of Office of Small and Disadvantaged Business Utilization

Amend section 15(k) of the Small Business Act to provide additional duties for agencies' Office of Small and Disadvantaged Business Utilization (OSDBU) [83 Fed. Reg. 84, 19146.](#)

Liquidated Damages Rate Adjustment

Adjust for inflation the rate of liquidated damages assessed for violations of the overtime provisions of the Contract Work Hours and Safety Standards Act. [83 Fed. Reg. 84, 19148.](#)

Audit of Settlement Proposals

Raise the dollar threshold requirement for the audit of prime contract settlement proposals and subcontract settlements from \$100,000 to align with the threshold for obtaining certified cost or pricing data, which is currently \$750,000 in FAR 15.403-4(a)(1). [83 Fed. Reg. 84, 19149.](#)

Federal Acquisition Circular 2005-98; Introduction

This document summarizes the Federal Acquisition Regulation rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005-98. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG. [83 Fed. Reg. 84, 19144.](#)

Federal Acquisition Circular 2005-98; Small Entity Compliance Guide

This document is issued under the joint authority of Department of Defense, General Service Administration, and NASA. This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005-98, which amends the Federal. [83 Fed. Reg. 84, 19150.](#)

GOVERNMENT ACCOUNTABILITY OFFICE

Bid Protests at GAO: A Descriptive Guide (Tenth Edition, 2018)

The Government Accountability Office (GAO) released the tenth edition of [Bid Protests at GAO: A Descriptive Guide](#), prepared by the Office of the General Counsel, to aid those interested in GAO's bid protest process. GAO issued the first edition of this booklet in 1975 to facilitate greater public familiarity with the bid protest process at GAO, and have revised it over the years to reflect changes in our bid protest procedures. This edition incorporates changes made to the Bid Protest Regulations, effective May 1, 2018, to conform the regulations to reflect administrative changes in the procedures enacted by section 1501 of the Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 433. Section 1501 required GAO to establish an electronic filing and document dissemination system for the filing of bid protests at GAO. The statute also provided for GAO to receive a fee from filers to support the establishment and operation of the electronic system. This edition also incorporates changes to the protective order process.

LABOR AND EMPLOYMENT

NJ Gov. Signs Paid Sick Leave Bill Into Law

According to an article on [Usatoday.com](#), New Jersey employers must now provide earned sick leave pay to their workers under a new law that Gov. Phil Murphy signed on May 3, 2018, a measure he said will support both working families and the state's economy. The Democrat-backed law allows workers to earn one hour of paid sick leave for every 30 hours at the same pay rate and benefits for regularly worked time. The bill had been **passed** by both houses of the state Legislature as of April 12 despite pushback from business groups.

CAPITOL HILL

Cardin, Risch Urge SBA to Better Protect Small Businesses from Cyber Threats

On May 1, 2018, U.S. Senators Jim Risch (R-ID), Chairman and Ben Cardin (D-MD), Ranking Member, of the Senate Committee on Small Business and Entrepreneurship, sent a letter to Small Business Administration (SBA) Administrator Linda McMahon to examine strategies for improving the content and delivery of cybersecurity assistance for small business owners. Their letter follows a recent committee hearing on cybersecurity preparedness, where these ideas were discussed. Senators Risch and Cardin highlighted testimony from small business owners in Idaho and Maryland and recommendations from hearing witness Daniel Castro with the Information Technology & Innovation Foundation that the SBA could make to further protect American small business owners from cyber threats, and to provide better assistance after one occurs. You can find more information [here](#).

PILIEROMAZZA BLOGS

New Verification Requirement for SAM.gov Now Applies to Existing Entities

By Meghan F. Leemon

Just over a month ago, we wrote about a new verification requirement in the form of a notarized letter for new entities registering on SAM.gov, a registration that is required for companies that do business with the federal government. At that time, the requirement was only applicable to new registrations. However, according to an April 26, 2018, update on GSA's website, the requirement is now applicable to "existing registrations being updated or renewed in SAM," effective April 27, 2018. [\[Read More\]](#)

The Section 809 Panel's Recommendations on Bid Protests May Cause Major Headaches for Contractors

By Isaias Alba IV and Kathryn M. Kelley

In Section 809 of the National Defense Authorization Act for FY 2016, Congress created a panel, known as the Section 809 Panel, to review and to provide recommendations on how to streamline and improve the Department of Defense's ("DOD") acquisition process. The Section 809 Panel issued the first volume of its report in January 2018. The second volume, slated for release in June 2018, may include sweeping recommendations for a drastic overhaul of the bid protest process for DOD procurements. While a successful offeror on any given procurement may stand to benefit from these significant changes, overall, this potential overhaul does not bode well for contractors and would undermine the integrity of the procurement process. [\[Read More\]](#)

Big Changes Proposed to SBA's Size Standards Methodology

By Jon Williams and Timothy F. Valley

Being and remaining a small business in the eyes of the government is one of the most important considerations for every federal contractor participating in small business set-aside programs. The rules of the contracting game change significantly if your company is small versus "other than small." On April 27, 2018, SBA released a proposed rule that could impact your status as a small business, as SBA goes forward with its statutorily mandated revision of the size standards that dictate the divide between small and large. This proposed rule notifies the public that it has until June 26, 2018, to review and comment on revisions to SBA's Size Standards Methodology white paper. The white paper will govern how SBA reviews what should be considered a small business. [\[Read More\]](#)

Make Releases Work for You

By Michelle E. Litteken

Releases have proven to be the double-edged sword of government contracting. In some cases, a release can prevent a contractor from successfully submitting a request for equitable adjustment or a claim to the Government. At the same time, a prime contractor can use releases to its advantage—requiring a subcontractor to sign releases during performance and at contract closeout. These releases can be used to easily defeat subsequent subcontractor claims if a dispute arises. Contractors should be familiar with releases in both contexts and use this knowledge to make releases work to their advantage. [\[Read More\]](#)

SBA Amends Its Recertification Rules: Effectively Overturning Recent OHA Case

By Samuel S. Finnerty

In a noteworthy decision earlier this year, the Small Business Administration's ("SBA") Office of Hearings and Appeals ("OHA") 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. [\[Read More\]](#)