



Weekly Report for October 28, 2016

OTHER GOVERNMENT CONTRACTING NEWS

“Texas court places temporary halt on Fair Pay rule.” *Federal News Radio*. October 26, 2016.

The Eastern District Court of Texas placed a preliminary injunction on Fair Pay and Safe Workplaces rule that was supposed to take effect October 25. The court adopted most of the arguments set forth by the Associated Builder and Contractors in the initial lawsuit filed on October 7, including that the rule violated federal contractors’ First Amendment and due process rights by “compelling federal contractors to report and defend against non-final agency allegations of labor law violations without being entitled to a hearing at which to contest such allegations.” In addition, the plaintiffs believe the “rule creates additional costs and regulatory burdens that will discourage qualified firms, particularly small businesses, from pursuing federal contracts, [...] will drive up costs to taxpayers [and] cause litigation and delays that will disrupt the federal procurement process for critical goods and services purchased by the government.” The full court order can be read [here](#).

“Reconsider Racial Element of SBA Program, Contractor Tells Court.” *Federal Contracts Report*. October 2016: 409-432.

A contractor, Rothe Development Inc, petitioned the D.C. Circuit Court to reconsider its decision upholding the constitutionality of the SBA’s 8(a) Program. The D.C. Circuit found that Section 8(a) of the Small Business Act lacks a racial classification and should be subject to a rational basis standard of review, not strict scrutiny. Rothe disagrees, saying the 8(a) Program provisions presumes “socially disadvantaged” refers to certain racial groups, encouraging and pressuring the set-aside of contracts based on race.