



Weekly Report for March 15, 2019

GOVERNMENT CONTRACTING

The Congressional Research Service issued a [report](#) providing an overview of small business contracting. The report describes the various federal programs, requirements, procurement officers, and procurement offices involved in promoting federal contracting and subcontracting with small businesses, small disadvantaged businesses (SDBs), firms participating in the SBA's "8(a) Program," Historically Underutilized Business Zone (HUBZone) small businesses, women-owned small businesses (WOSBs), and service-disabled veteran-owned small businesses (SDVOSBs). The report also examines several federal requirements and authorities in promoting contracting and subcontracting with small businesses; discusses the SBA's oversight and responsibilities concerning the small business goaling program, small business mentor-protégé programs, the 7(j) management and training program, and the surety bond guaranty program; discusses the role of the Office of Small and Disadvantaged Business Utilization (OSDBU) in promoting contracting with small businesses; examines the role and responsibilities of various federal procurement officers in promoting small business contracting opportunities; and concludes with a discussion of the strong bipartisan support for small business contracting programs.

According to Washington Technology, the Department of Homeland Security (DHS) issued a [request for information](#) pertaining to its effort to revamp its headquarters IT operations. Among the changes DHS is exploring is a move from the current government-owned, contractor-operated model to a contractor-owned, contractor-operated model. This infrastructure would support 10,500 users and 12,500 assets such as desktops, laptops, thin clients (used as a PC replacement technology to help customers access the virtual desktop or virtualized applications), printers, copiers, servers and video conferencing units. Per Washington Technology, DHS is considering a seven-to-ten year contract for the project. Responses to the RFI are due March 25, 2019.

The Air Force [awarded](#) 51 companies contracts with a total initial value of \$8.75 million in a matter of minutes at the Inaugural Air Force Pitch Day event held March 6-7, in New York City. Air Force Pitch Day is modeled after commercial investment pitch competitions to deliver a faster, smarter approach to compete for ideas in the accelerating technology ecosystem. The process is a major departure from the lengthy contractual processes typically expected of the military. It focuses on rapidly awarding Phase I Small Business Innovation Research, or SBIR, contracts to companies based on a simpler streamlined evaluation of white papers and in-person presentations. Air Force contracting officials reviewed 417 submissions received during the 30-day application period and then invited 59 businesses to pitch their proposals in person on March 6. Of those, 51 received an initial award of up to \$158,000 with initial payment within minutes of their presentations. During the entire week, including Pitch Day, the Air Force awarded 242 SBIR contracts valued at \$75 million.

LABOR AND EMPLOYMENT

According to Bloomberg Government, the Department of Labor (DOL) will move forward on a rule that would require stricter financial reporting requirements for labor organizations and their affiliates. The proposal would re-establish a Form T-1, which would require union trusts, and can include a strike fund or apprenticeship programs, to file annual spending reports, is undergoing review by the White House's Office of Information and Regulatory Affairs (OIRA). OIRA review is the first step of regulatory review before a proposal can be released to the public for comments. With this proposal, which was originally scheduled for a December 2018 publication according to the agency's fall regulatory agenda, the DOL says it is looking to collect financial information "that historically has largely gone unreported." It will also bring reporting requirements for labor organizations and their trusts "in line with contemporary expectations for the disclosure of financial information." According to Bloomberg Government, the proposal was received by OIRA on March 6, 2019.

According to Bloomberg Government, the National Labor Relations Board's (NLRB) General Counsel, Peter Robb, wants to limit regional directors' use of subpoenas to get information from companies and unions not cooperating with the agency's investigations of alleged unfair labor practices against them. In a March 13, 2019 [memorandum](#), General Counsel Robb noted that he seeks the prompt resolution of labor disputes. In order to achieve this objective, he emphasized that charging parties are obligated to promptly meet with the NLRB agent assigned to their charge, and strongly encouraged charging parties to provide their sworn affidavit, provide other witnesses and relevant documents, and submit a complete written account of the facts and statement of their position as soon as possible. If a charged party is significantly uncooperative, the memorandum recommended that Regional Directors who conclude that a complaint could be issued on the evidence available, issue such a complaint and include a footnote noting the significant lack of cooperation rather than issuing an investigative subpoena because the subpoena could "unnecessarily prolong the investigation and impede the prompt resolution of the underlying dispute." However, a Regional Director's issuance of a complaint noting the lack of cooperation—even if no investigative subpoenas are issued—is not a substitute for issuing trial subpoenas later in the proceedings. Bloomberg Government commented that speeding up case processing has been one of General Counsel Robb's chief goals, and he previously directed the NLRB's regional offices to adopt new protocols intended to reduce the time between receiving a labor charge and disposing of a case.

The Government Accountability Office (GAO) issued a [report](#) regarding whistleblower protection and an analysis of the Department of Defense's (DoD) actions to improve timeliness and safeguard confidentiality. The GAO found that the DoD Office of Inspector General (DoD/IG) and military service offices of inspector general met some but not all fiscal year 2018 timeliness and quality goals for handling whistleblower complaints. For example, DoD/IG met its timeliness goals related to referring complaints to the appropriate agency and the goals related to the quality of investigations. However, about 85% of DoD/IG reprisal and senior official misconduct investigations exceeded statutory and internal timeliness goals. Additionally, even though the IGs have taken steps to safeguard whistleblower information in their information technology systems and applications, employees in all of the IGs were able to access sensitive whistleblower information without a need to know. The GAO made 12 recommendations, including that the IGs take additional actions to improve timeliness, develop additional procedures to protect whistleblower confidentiality, and take steps to further limit IG employee access to sensitive whistleblower information.

The Department of Justice [announced](#) that Michelle A. Holt was sentenced to four years in prison for computer fraud and theft of government property in connection with an extensive timekeeping fraud. According to court documents, she was previously employed as a federal employee for the Department of Defense and worked as a secretary for the U.S. Air Force, Air Combat Command, Communication Support Squadron, at Joint Base Langley-Eustis. Ms. Holt was a salaried employee on the General Schedule grade for the federal civilian workforce, and, as such, she was entitled to overtime pay if authorized by her employer, other forms of holiday and annual leave, and premium pay for any federal holidays worked. A law enforcement investigation determined that from December 2001 to July 2018, Ms. Holt falsely claimed over 42,000 hours in unauthorized overtime for hours she did not work, as well as other amounts of unauthorized holiday leave, sick leave, and annual leave, all amounting to losses to the United States of more than \$1.4 million. Ms. Holt accomplished the fraud by using another employee's log-in information without authorization to make manual retroactive adjustments to protected computer time and attendance systems to add overtime, reverse leave taken, and reverse holiday leave.

CYBERSECURITY

Senator Marco Rubio (R-FL), Chairman of the Senate Committee on Small Business and Entrepreneurship, [introduced](#) two bills to protect small businesses from cybersecurity threats. The first bill ([S.772](#)), co-sponsored by Senator Ben Cardin (D-MD), would require the Small Business Administration (SBA) to develop a cyber strategy, examine its IT system components' country of origin, and report on breaches, threats, and the SBA's actions taken to mitigate the same to the House and Senate Small Business Committees. The second ([S.771](#)), co-sponsored by Senator Jeanne Shaheen (D-NH), would create a training program for small business development centers (SBDCs) to prepare counselors in cyber planning assistance, require the SBA Administrator to establish a cyber counseling program, and require certain numbers of SBDC employees to be certified in cyber strategy counseling.

PILIEROMAZZA BLOGS

GAO Finds That Federal Agencies Have Made Few SBIR Awards to Small Businesses Majority-Owned by Multiple Venture Capital Operating Companies, Hedge Funds, or Private Equity Firms

By Patrick T. Rothwell

The purposes of the Small Business Innovation Research ("SBIR") program include, among other things, the use of small businesses to meet federally funded R&D needs and the fostering and encouragement of participation by SDBs and WOSBs in technological innovation. Federal agencies with obligations of more than \$100 million for extramural R&D activities (that is, R&D conducted by non-federal employees outside of federal facilities) must establish an SBIR program and are required to spend a percentage of their extramural R&D obligations for each year. For fiscal year 2017 and in each fiscal year after, the percentage that must be spent on SBIR awards is 3.2 percent. Each participating agency's SBIR program is surveyed and monitored by SBA.

[\[Read More\]](#)

Are You Complying with All Applicable Procurement Requirements?

By Julia Di Vito

Entering into contracts with the federal government requires contractors to comply with a significant number of requirements, including statutory, regulatory, and contractual requirements. And, under the False Claims Act, the penalties for failing to comply with those requirements can be steep. In fiscal year 2018, there was a total of \$2.88 billion in settlements and judgments in False Claims Act cases. That \$2.88 billion includes settlements and judgments for procurement-related fraud cases brought under the False Claims Act.

[\[Read More\]](#)

Buyer Beware: Outsourcing Labor Puts You at Risk of Prevailing Wage Violations

By Nichole D. Atallah

Recently, a Department of Labor (DOL) investigation found that four federal contractors were responsible for paying 53 current and former employees a total of \$255,474 for violating the Davis-Bacon and Related Acts (DBRA). DOL determined the contractors failed to pay the correct prevailing wages and fringe benefits. In this case, the prime contractor subcontracted with a temporary staffing company that failed to pay cleaning service crews in accordance with DBRA requirements. The temporary employees were misclassified and not paid the required prevailing wage rates. Another subcontractor also failed to pay the correct fringe benefits. Due to the repeated and willful nature of these violations, one of the contractors and its owner have been declared ineligible to bid on federal DBRA contracts for a period of 3 years.

[\[Read More\]](#)