



Weekly Report for May 7, 2019

### **GOVERNMENT CONTRACTING**

**The Department of Defense issued a final rule amending the Defense Federal Acquisition Regulation Supplement** to implement section 2804 of the National Defense Authorization Act for Fiscal Year 2019, which increased the threshold for small business set-asides of acquisitions for architect-engineer services, including construction design, in connection with military construction projects or military family housing projects, to \$1 million. The final rule became effective on April 30, 2019. [84 Fed. Reg. 83, 18160](#).

**The Department of Energy's (DOE) Office of Hearing and Appeals issued a notice of proposed rulemaking and request for comments on its proposals to modernize the DOE's contractor employee whistleblower program and provide improvements** within the existing program. Currently, the DOE Contractor Employee Protection Program provides whistleblower protections, similar to those in the Whistleblower Protection Act, to employees of DOE contractors and subcontractors. The program was last revised in 1999. Comments are due May 30, 2019. [84 Fed. Reg. 83, 18164](#).

**According to a Government Executive [article](#), the Office of Personnel Management (OPM) published a new [final rule](#) governing how federal employees can earn paid-time-off for religious observances that do not coincide with a federal holiday.** Per Government Executive, beginning on May 29, 2019, federal workers will be able to take paid days off for religious holidays, provided they work overtime in the weeks before and after the observance at their normal rate of pay.

**Data Lab, a resource provided on USAspending.gov—the official source for spending data for the U.S. government—[reported](#) that the U.S. federal government spends about \$500 billion each year on contracts, which it uses to buy the products and services it needs.** Data Lab performed an analysis using agency contract data for prime contract awards in FY 2017, which agencies report to USAspending.gov (and which is publicly available). Each reported contract included information about the agency and sub-agency that awarded the contract, the contract recipient, and a Product and Service Code, which indicated the goods or services delivered as a result of the contract. Data Lab's report includes an interactive diagram with three rings: the inner ring, which represents federal agencies; the middle ring, which represents sub-agencies; and the outer ring, which represents the contractors who receive awards from the sub-agencies. All the sections in each ring are sized by the total dollar amounts spent on contracts if FY 2017.

**According to Bloomberg Government, the Defense Information Systems Agency (DISA) posted plans to release a solicitation to re-compete its Command and Control Portfolio Systems Engineering services contract, or C2 Portfolio SE, by June 30.** Per Bloomberg

Government, C2 Portfolio SE will be a single-award, indefinite-delivery/indefinite-quantity contract set aside for small businesses, and the planned period of performance of the follow-on contract is five years. The winning small business would provide support services in 10 functional task areas: contract and task order management; systems engineering support; architecture and design; configuration management; cybersecurity; C2 laboratory and systems administration support; research, development, and sustainment technical experiments and investigation; systems engineering process improvement/automation; capability deployment planning and review; and training and technical exchange.

### **LABOR AND EMPLOYMENT**

**The Equal Employment Opportunity Commission (EEOC) announced an immediate reinstatement of the revised EEO-1: Pay Data Collection and the collection of 2018 pay data (EEO-1 Component 2) from EEO-1 filers by September 30, 2019.** Employers with 100 or more workers and federal contractors or first-tier subcontractors must file EEO-1 forms breaking down the employers' workforces by race, ethnicity, gender, and job title with the EEOC. Component 2 requires employers to also submit detailed data on employee compensation and hours worked sorted by job category, pay band, race, ethnicity, and gender. In its announcement, the EEOC said EEO-1 filers should begin preparing to submit Component 2 data by September 30, 2019. The EEOC also announced that it will collect Component 2 data for the calendar year 2017, which was published in a second announcement in the Federal Register. As such, EEO-1 filers should prepare and submit Component 2 pay data for the calendar years 2017 and 2018 by September 30, 2019. [84 Fed. Reg. 84, 18383](#); [84 Fed. Reg. 86, 18974](#).

**The Department of Labor (DOL) [announced](#) that it issued a new opinion letter addressing compliance issues related to the Fair Labor Standards Act (FLSA).** The opinion letter—FLSA2019-6—addresses whether a service provider for a virtual marketplace company is an employee of the company or an independent contractor under the FLSA. The letter responds to a request on behalf of a particular virtual marketplace company and concludes that the workers who provide services to consumers through this specific company's virtual platform are independent contractors, not employees of the company. To make this determination, the DOL's Wage and Hour Division applied its longstanding and unchanged six-factor balancing test, derived from Supreme Court precedent, which examines the nature and degree of the potential employer's control; the permanency of the worker's relationship with the potential employer; the amount of the worker's investment in facilities, equipment, or helpers; the amount of skill, initiative, judgment, or foresight required for the worker's services; the worker's opportunities for profit or loss; and the extent of integration of the worker's services into the potential employer's business.

### **CYBERSECURITY**

**As discussed in a NextGov [article](#), President Trump signed an Executive Order directing the creation of programs to grow and strengthen the U.S.'s cybersecurity workforce.** The [Executive Order](#) seeks to standardize cross-government language around cybersecurity, incentivize engagement from academia and federal agencies, accelerate learning to address the gap in the cyber workforce, and create a federal rotational program where federal employees can expand their expertise through temporary, cyber-related assignments within other agencies in the hopes that new exposure will increase skills and encourage interagency

knowledge transfers. More specifically, the Executive Order encourages the widespread adoption of the National Institute of Standards and Technology's National Initiative for Cybersecurity Education, or NICE framework, which serves as a reference for identifying, recruiting, developing, and retaining cybersecurity talent.

### **PILIEROMAZZA BLOGS**

#### **BLOG: SBA Adopts New Size Standard Methodology and Says Updates to Size Standards Coming in "Near Future"**

By Megan C. Connor

Earlier this month, SBA published its final rule adopting a revised size standards methodology. My colleagues, Jon Williams and Tim Valley, previously described the proposed changes to the methodology in a blog last year. The final methodology white paper adopts all the changes SBA proposed with minor revisions.

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