



## Weekly Report for September 21, 2018

### **SMALL BUSINESS ADMINISTRATION**

#### **House Small Business Committee Calls for a Status Update on FAR Revision of Limitations on Subcontracting.**

Last week, House Small Business Committee Chairman Steve Chabot and Ranking Member Nydia Velázquez sent a letter to the acting administrator of the Office of Federal Procurement Policy requesting a status update of Federal Acquisition Regulation Case Number 2016-011, titled “Revision of Limitations on Subcontracting. Section 1651 of Public Law 112-239, the National Defense Authorization Act for Fiscal Year 2013 (2013 NDAA), made significant changes to the limitations on federal subcontracting, which were reflected in corresponding regulations made by the Small Business Administration (SBA) on May 31, 2016. Section 1651 of the 2013 NDAA and SBA regulations require that the limitations on subcontracting for full or partial small business set-aside contracts, HUBZone contracts, 8(a) contracts, service-disabled veteran-owned small business contracts, women-owned small business, and economically disadvantaged women-owned small business contracts be evaluated based on the amount paid by the federal government, rather than the previously used cost of labor, or cost of manufacturing calculation. Significantly, the 2013 NDAA and SBA regulations exclude from the limitations on subcontracting the work performed by first-tier subcontractors that are considered “similarly situated entities.” It has been 6 years since the 2013 NDAA was signed into law and Congress has respectfully requested a status update and timeline. You can find the article [here](#).

#### **Improvements Needed in SBA’s Oversight of 8(A) Continuing Eligibility Processes**

The Small Business Administration’s (SBA’s) 8(a) Business Development Program provides economically and socially disadvantaged small business owners with business development assistance and greater access to Federal contracting opportunities. The objective was to determine whether SBA’s oversight ensured 8(a) program participants met continuing eligibility requirements. To answer this objective, OIG judgmentally selected two samples for review. First, they reviewed 15 individually owned 8(a) firms, with the highest 8(a) set-aside contract dollars in FY 2016. The 15 firms received \$461 million, or 3.96 percent, of the \$11.6 billion in 8(a) set-aside contract dollars awarded to individually owned firms in FY 2016. Second, they reviewed 10 individually owned 8(a) firms based on complaints that the OIG Hotline referred to SBA between October 1, 2015, and May 4, 2017, regarding the continuing eligibility of 8(a) participants to assess SBA’s complaint review process as part of its oversight of the program. The OIG also met with SBA officials to gain an understanding of the current 8(a) program structure and processes. Additionally, the OIG reviewed documents associated with the firms’ annual and continuing eligibility reviews, information in SBA’s 8(a) information systems, and third-party sources for indications of ineligibility. It was found that SBA did not consistently identify ineligible firms in the 8(a) program and did not always act to remove firms it determined were no longer eligible for the program. Additionally, SBA did not perform required continuing eligibility reviews when it received specific and credible complaints regarding firms’ eligibility and did not log all complaints. It was found that 20 of the 25 firms reviewed should have been removed from the 8(a) program. These firms received \$126.8 million in new 8(a) set-aside contract obligations in FY 2017 at the expense of eligible disadvantaged firms. For more information on the Audit Report, follow this [link](#).

## **DEFENSE DEPARTMENT**

### **Class Deviation- Permanent Supply Chain Risk Management Authority**

The Office of the Undersecretary of Defense issued a [Class Deviation](#), which, effective immediately, removes the sunset date at Defense Federal Acquisition Regulations (“DFARS”) SUBPART 239.73--REQUIREMENTS FOR INFORMATION RELATING TO SUPPLY CHAIN RISK, Section 239.7300(b) and changes the statutory citations in OF ARS subpart 239.73 from section 806 Pub. L. 111-383 to 10 U.S.C. 2339a. Contracting officers shall use the provision and clause provided in the attachment to this deviation in lieu of the provision at OF ARS 252.225-7017, Notice of Supply Chain Risk, and clause at 252.225-7018, Supply Chain Risk, as prescribed in the attachment.

### **Organizational Name Change to Defense Pricing and Contracting**

The Office of the Undersecretary of Defense issued the following [Memorandum](#), which, effective immediately, renamed the organization formerly known as Defense Pricing/Defense Procurement and Acquisition Policy (DP/DP AP), as Defense Pricing and Contracting (DPC). The DPC office is currently evaluating their mission, function, and responsibility.

### **Performance-Based Payments and Progress Payments**

The Department of Defense (DoD) is hosting a public meeting on October 10, 2018, to obtain views of experts and interested parties in Government and the private sector regarding revising policies and procedures relating to customary progress payment rates and maximum performance-based payment rates for DoD contracts. [83 Fed. Reg. 184, 47867](#).

## **VETERANS AFFAIRS**

### **VA Acquisition Regulation Changes:**

The Department of Veterans Affairs (VA) is amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency-specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce the burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, to be published in the Federal Register. The first rulemaking revises VAAR concerning Subcontracting Policies and Procedures and Government Property. [83 Fed. Reg. 181, 47097](#). An additional rulemaking revises VAAR concerning Construction and Architect-Engineer Contracts, as well as affected parts covering the Department of Veterans Affairs Acquisition Regulations System, Foreign Acquisition, Contract Administration and Audit Services, Quality Assurance, Solicitation Provisions and Contract Clauses, and Forms. [83 Fed. Reg. 174, 45384](#). Finally a third rulemaking revises the VAAR concerning Contracting by Negotiation and Service Contracting, as well as affected parts covering the Department of Veterans Affairs Acquisition Regulation System, Types of Contracts, Termination of Contracts, Solicitation Provisions and Contract Clauses, and Loan Guaranty and Vocational Rehabilitation and Employment Programs. [83 Fed. Reg. 174, 45374](#).

## **WHITE HOUSE**

### **'Unprecedented' Government Spending Spree Picks Up Speed**

According to an article on [Nextgov.com](#), the federal government is primed to spend as much as \$300 billion in the final quarter of fiscal 2018 as agencies rush to obligate money appropriated by Congress before Sept. 30 or return it to the Treasury Department. The spending spree is the product of the omnibus budget agreement signed six months late in March coupled with funding increases of \$80 billion for defense and \$63 billion for civilian agencies. The shortened time frame left procurement officials scrambling to find ways to spend the money. Through August, defense and civilian agencies obligated some \$300 billion in contracts. But to spend all the money appropriated to them by Congress, they may have to obligate well over \$200 billion more in the final quarter of fiscal 2018, which ends in two weeks.

## **CAPITOL HILL**

### **House Small Business Committee Calls for Transparency from Federal Agencies**

Last week, House Small Business Committee Chairman Steve Chabot and Ranking Member Nydia Velázquez sent follow-up letters to the heads of three federal agencies requesting further information on small entity compliance guide reporting as required by Section 212 of the Small Business Regulatory Enforcement Fairness Act.

"Small businesses deserve transparency from the federal government and for their voices to be heard in the federal rulemaking process. It is imperative that all federal agencies comply with the law by producing these documents to the Committee, so we can understand the unique effects of regulations on small businesses," said Chairman Chabot. You can find the letter and more information about this topic [here](#).

### **Small Business Optimism Hits 45-Year High**

On Tuesday, September 11<sup>th</sup>, the National Federation of Independent Business (NFIB) released its Small Business Optimism Index from August, which marks a new record high in the survey's 45-year history. New records were set for job creation plans and unfilled job openings. Inventory investment plans were also at the strongest level since 2005, and capital spending plans were the highest since 2007.

"With small business optimism at the highest its been in 45 years, it's clear that Americans are prospering, and small businesses are thriving. These historic gains are proof that the new tax law and a reduction in regulations are significantly driving our economic gains. I look forward to seeing continued growth in our economy," said Chairman Chabot (R-OH)

### **Chairman Chabot: Our Economy is Full Speed Ahead**

On Friday, September 7<sup>th</sup>, House Small Business Committee Chairman Steve Chabot released a statement in light of a U.S. Department of Labor report that 201,000 jobs were created in August, with wages up 2.9 percent for the year, which is the largest increase since June 2009.

"Our economy is going full speed ahead, as evidenced by today's jobs report released by the Department of Labor. With the unemployment rate remaining near historic lows of 3.9 percent and 201,000 jobs added in August, we are seeing the effects of the tax law and a reduction in regulations. In fact, small business owner's optimism levels are among the highest in history. It is not just more jobs, but better jobs as wages increased by 2.9 percent from last year, putting more money in hardworking Americans' pockets. I look forward to more growth from small businesses on Main Street," said Chairman Chabot.

You can find more information, including the Department of Labor report [here](#).

## **PILIEROMAZZA BLOGS**

### **NLRB Proposes Rule to Limit Joint Employer Test: Small Businesses Beware**

By Sarah L. Nash

If at first you don't succeed, try, try again. The National Labor Relations Board ("NLRB") has taken this proverb to heart when it comes to implementing a new test for what it means to be a "joint employer" under the National Labor Relations Act. Following a failed attempt to change the standard through case law, the NLRB is now attempting to revise it by issuing a proposed rule. [\[Read more\]](#)

### **How New Minimum Wage and Service Contract Act Health and Welfare Rates Apply to Your Contract**

By Nichole D. Atallah

As we head into a busy proposal and award season, keep in mind some important changes to Service Contract Act ("SCA") wages and fringe benefits. In July, the Department of Labor ("DOL") issued revised SCA health and welfare ("H&W") benefit amounts, increasing the base rate from \$4.41 per hour to \$4.48 per hour. An H&W rate of \$4.18 per hour is now applicable to employees performing work on contracts that include FAR 52.222-62, Sick Leave for Contractors. This rate takes into account that employers who are required to provide sick leave cannot count sick leave provided against the H&W benefit. Hawaii employers should look closely for special rates that apply to contracts performed there. [\[Read more\]](#)

### **How a CTA Can Help You Qualify for Government Contracts**

By Julia Di Vito

You may have heard of Contractor Team Arrangements ("CTA") that can be used to pursue General Services Administration ("GSA") Schedule contract opportunities, but do you know how a CTA can maximize your ability to qualify for government contracts? CTAs are distinct from traditional prime contractor-subcontractor relationships and joint ventures, and they provide different methods for making your company a more attractive offeror. [\[Read more\]](#)

### **Taking Advantage of State and Local Small Business Certifications**

By Meghan F. Leemon

Many federal government contractors are familiar with certain federal certifications, such as small business, woman-owned small business, service-disabled veteran-owned small business, and the like, and the contract set-aside benefits that are associated with such socioeconomic designations. While some of these federal certifications may flow down to state and local procurements, many government contractors may also qualify for state and local certifications, which can generate more revenue outside of the ever-competitive federal government contracting marketplace. [\[Read more\]](#)