



Weekly Report for March 9, 2018

## **GOVERNMENT CONTRACTING**

### ***Claims Court Could Receive Record Number of Protests in 2018***

According to an article in the Federal Contracts Report, the United States Court of Federal Claims (COFC) is on course to receive an unprecedented 200 bid protest cases in calendar year 2018. In each of the past 15 years, between 100 and 130 protests were filed with the COFC, making 2018's potential docket the busiest in the courts history. This large increase can be partly attributed to a large and growing case involving the Department of Education and Windham Professionals Inc. The case has 18 plaintiffs and revolves around an 800 million dollar debt collection awards. The awards were initially granted to 7 companies, but competitors successfully protested the award at the Government Accountability Office (GAO), and in response to a multiparty protest at the COFC, the agency agreed to reopen the competition last May. Windham Professionals Inc. and one other company each received 400 million dollar awards which were being protested in the COFC. Coupled with similar protests, it's easy to see how 200 bid protests could ultimately come before the COFC. For more information, please read the Federal Contracts Report, Vol 109, No. 8, 195 (2018).

### ***A New Filing System for GAO***

According to an article in the Federal Contracts Report, GAO is preparing to unveil its new Electronic Protest Docketing System later in 2018, after years of planning and testing. The New system is currently in a pilot phase, which follows the security sub-assurance and accountability reviews that took place last year to eliminate bugs from the system. Currently, contractors use the combination of email, mail, and hand-delivered packages to initiate and maintain bid protest-related communications. The new system, by contrast, is a single place to initiate, update, and monitor protests at GAO. The per case filing fee to use the system will be \$350. For more information, please read the Federal Contracts Report, Vol 109, No. 8, 195 (2018).

## **SMALL BUSINESS ADMINISTRATION**

### ***SBA Government Contracting Funds up 1.5%***

According an article in the Set-Aside Alert, the current administration's budget request for the Small Business Administration in fiscal 2019 proposes a small increase of 1.5% for small business federal contracting programs. The budget request also proposes a 15% drop in funding for entrepreneurial programs, including business development centers. Another negative found in the budget request would drop the HUBZone programs funding by 4.4%, and the Women's Business Ownership funding would drop by 5%. For further statistics on the budget proposals please see the Set-Aside Alert, Vol26, No 5, 1-3 (2018).

## **VETERANS AFFAIRS DEPARTMENT**

### ***Federal Civil Penalties Inflation Adjustment Act Amendments***

The Department of Veterans Affairs (VA) is providing public notice of inflationary adjustments to the maximum civil monetary penalties assessed or enforced by VA, as implemented by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, for calendar year 2018. VA may impose civil monetary penalties for false loan guaranty certifications. Also, VA may impose civil monetary penalties for fraudulent claims or written statements made in connection with VA programs in general.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, sets forth a formula that increases the maximum statutory amounts for civil monetary penalties and directs VA to give public notice of the new maximum amounts by regulation. Accordingly, VA is providing notice of the calendar year 2018 inflationary adjustments that increase maximum civil monetary penalties from \$21,916 to \$22,363 for false loan guaranty certifications and from \$10,957 to \$11,181 for fraudulent claims or written statements made in connection with VA programs generally. [83 Fed. Reg. 8945](#).

## **U.S. SUPREME COURT**

### ***High Court Agrees To Review 9th Circ.'s Age Bias Ruling***

The U.S. Supreme Court on Monday agreed to consider the Ninth Circuit's ruling that the Age Discrimination in Employment Act applies to political subdivisions of every size, teeing up a decision that could settle a split among circuits. The high court granted the Mount Lemmon Fire District's petition for certiorari concerning the Ninth Circuit's revival of a lawsuit by two firefighter captains who claimed they were fired by the Arizona fire department because of their age, in violation of the ADEA. For more information can be found [here](#).

## **CAPITOL HILL**

### **Small Business Bankruptcy: Assessing the System**

On March 7, 2018, the Senate Judiciary Subcommittee on Oversight, Agency Action, Federal Rights, and Federal Courts held a hearing to assess the bankruptcy system for small businesses. Among those testifying were representatives from the ABI Commission to Study the Reform of Chapter 11, Brooklyn Law School, and Wilmer Cutler Pickering Hale and Dorr LLP. Archived video footage of the hearing can be viewed [here](#).

### **Regulatory Reform and Rollback: The Effects on Small Businesses**

On March 7, 2018, the House Small Business Committee heard from a panel of small business stakeholders about regulatory reform and President Trump's Executive Order 13771, which requires the elimination of at least two prior regulations for every new regulation issued. Chairman Steve Chabot has applauded President Trump's efforts, saying:

Small business owners must navigate what is often a tangled web of complex, confusing, and costly regulations. A start-up company will spend on average over \$83,000 in regulatory costs alone in the first year. Small

business owners also spend a substantial amount of time with regulations, with nearly half of them spending over 40 hours every year to handle new and existing regulations.

Ranking Member Nydia Velázquez expressed concerns with this policy, saying “[w]hile we certainly must be mindful of how regulations affect small businesses, the Trump Administration’s proposal . . . is arbitrary and economically reckless,” and that “[w]e cannot lose sight of the fact that many regulations exist to protect our health and safety and some of them provide small businesses with stability or protection from unfair advantage by their larger competitors.” You can read their full statements [here](#) and [here](#), respectively. Archived video footage of the hearing can be found [here](#).

## **PILIEROMAZZA BLOGS**

### **LGBTQ Discrimination Claims Under Title VII Likely to Increase in 2018 After Second Circuit Ruling**

By Matthew Feinberg

This week, the New York-based United States Court of Appeals for the Second Circuit became only the second federal appellate court to rule that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of an employee’s sexual orientation. The Second Circuit’s decision in *Zarda v. Altitude Express* is only binding on employers in New York, Connecticut, and Vermont. However, given the court’s influence and the changing tides on the issue, we anticipate the decision will have wide-reaching implications for employment law throughout the nation. And, because the Supreme Court will not weigh in on the issue until at least Spring 2019, the impact of the Second Circuit’s decision may be felt immediately by employers in every part of the country.

### **VA Amends Rules on Price Adjustments, Comments on Its Use of the Vets First Authority and Cascading Set-Asides**

By Jon Williams

On February 21, 2018, the U.S. Department of Veterans Affairs (VA) issued final rules to amend its regulations that pertain to Economic Price Adjustment clauses for firm-fixed-price contracts, identifying VA’s Task-Order and Delivery-Order Ombudsman; clarifying the nature and use of consignment agreements; adding policy coverage on bond premium adjustments and insurance under fixed-price contracts; and providing for indemnification of contractors for medical research or development contracts. These final rules adopt the proposed rule published on March 13, 2017, and will be effective on March 23, 2018.

### **Other Transaction Authority: What Is It and How Can I Get It?**

By Megan Connor

If you followed the National Defense Authorization Act for Fiscal Year 2018 (“FY 2018 NDAA”) or the recent cloud computing award to REAN Cloud, you likely heard the term “other transaction authority,” but may have wondered what it means. The term is an invention of lawmakers to give the U.S. Department of Defense (“DOD”) maximum flexibility in obtaining innovation without the trappings of traditional procurements. Contractors looking to take advantage of “other transaction authority” or “OTA” need to know some basics.