



Weekly Report for November 16, 2018

DEFENSE DEPARTMENT

Performance-Based Payments and Progress Payments (DFARS Case 2017-D019)

The Department of Defense (DOD) is withdrawing the proposed rule on performance-based payments and progress payments that it published on August 24, 2018. [83 Fed. Reg. 193, 50052](#).

Commercial Items Omnibus Clause for Acquisitions Using the Standard Procurement System

The DOD issued a [class deviation](#), which rescinds and supersedes Class Deviation 2013-00019. Effective immediately, when using the Standard Procurement System (SPS) to contract for commercial items, all DOD contracting activities may deviate from the requirements at Federal Acquisition Regulation (FAR) 12.301 (b)(4) and the clause at FAR 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders- Commercial Items. The clause at FAR 52.212-5 requires the contracting officer to "check a box" to identify the clauses that are applicable to the specific acquisition of commercial items. Rather than requiring the contracting officers to "check the applicable clauses," SPS has a clause logic capability that automatically selects the clauses under FAR clause 52.212-5.

Defense Federal Acquisition Regulation Supplement

The DOD issued the following final rules:

- Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Acquisition Streamlining" (DFARS Case 2018-D033) [83 Fed. Reg. 211, 54676](#).
- Defense Federal Acquisition Regulation Supplement: Mentor-Protégé Program Modifications (DFARS Case 2017-D016) [83 Fed. Reg. 211, 54677](#).
- Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision "Bonds or Other Security" (DFARS Case 2018-D036) 83 Fed. Reg. 211, 54677. [83 Fed. Reg. 211, 54679](#).
- Defense Federal Acquisition Regulation Supplement: Update of Clause on Section 8(a) Direct Award (DFARS Case 2018-D052) [83 Fed. Reg. 211, 54681](#).
- Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Option for Supervision and Inspection Services" (DFARS Case 2018-D041) [83 Fed. Reg. 211, 54680](#).

SMALL BUSINESS ADMINISTRATION

The U.S. Small Business Administration published a notice of proposed rulemaking in the Federal Register to solicit public comments on, among other things, Express loan programs and affiliation standards. This Proposed rule announces the extension of the current comment period for an additional 15 business days until December 18, 2018. [83. Fed. Reg. 222, 57693](#).

OFFICE OF PERSONNEL MANAGEMENT

OPM to Agencies: ‘Be Mindful’ of Policies in Trump’s Workforce Orders Despite Court Ruling

According to an article on Govexec.com, Office of Personnel Management acting Director Margaret Weichert issued new guidance for agencies to implement three controversial executive orders, despite the fact that their key provisions were struck down in federal court in August. In a memo to agency leaders, Weichert acknowledged that provisions making it easier to fire federal employees, setting time limits on collective bargaining negotiations, and restricting grievances and the use of official time was ruled unlawful by U.S. District Judge Ketanji Brown Jackson last summer. But she encouraged agencies to continue to pursue the spirit of those executive orders in their ongoing negotiations for new contracts with federal employee unions. The Justice Department is in the process of appealing that decision to the U.S. Court of Appeals for the D.C. Circuit, although its request to expedite the case was denied. The government’s opening brief is due December 7th, and unions’ response will be due in February.

OPM Grants Greater Flexibility with Senior Executive Personnel Appraisal Systems

According to an article in Govexec.com, the Office of Personnel Management (OPM) announced that it would provide agencies with additional flexibilities in the process to certify performance appraisal systems for senior executives and technical experts. In a memo to agency heads, acting OPM Director Margaret Weichert said the changes are part of an effort to implement President Trump’s management agenda by “removing procedural hurdles” for agencies when they look to certify their performance appraisal systems for the Senior Executive Service, Senior-Level and Scientific and Professional pay systems. “The majority of agencies now have extensive experience with SES and SL/ST certification and have well-established policies and procedures that operationalize the certification criteria,” Weichert wrote. “Therefore, the changed process focuses less on verifying operational compliance and more on the results of agencies’ appraisal systems, thereby saving time and resources.”

VETERANS AFFAIRS

VA Acquisition Regulation: Construction and Architect-Engineer Contracts

The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the 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, will publish them in the Federal Register. VA will combine related topics, as appropriate. In particular, this 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](https://www.federalregister.gov/documents/2017/12/14/2017-24538).

PILIEROMAZZA BLOGS

Three Indicators You Need an OCI Mitigation Plan

By Michelle E. Litteken

The risk of an organizational conflict of interest (“OCI”)—either perceived or actual—strikes fear in the heart of many a government contractor. An OCI may result in disqualification from a procurement, an adverse bid protest decision, or termination of a contract. Although that can be unnerving, in many cases, an OCI is mitigatable if the contractor implements measures to avoid, neutralize, or mitigate the conflict. At the same

time, it is critical to implement a mitigation plan early on. For this reason, contractors should be aware of signs that a contract could give rise to a perceived or actual OCI. To read the full Blog, please follow this [link](#).

Growing Pains: Growth Capital Sources and Considerations Part 1: Debt Financing
By Kathryn L. Hickey

At a certain point in a company's life cycle, founders are likely to be faced with the financial pinch of requiring outside sources of funding to finance further growth and expansion of the business. Once bootstrapping ceases to be an option, there are two main avenues to pursue for growth capital: traditional bank debt or private equity investment. Both options present pros and cons, and they are not mutually exclusive. Ultimately, the route founders decide upon will depend on the objectives, limitations, and concerns specific to their organization. This article will focus on the first of these two financing options, traditional debt financing. A second post will follow that focuses on private equity investment. To read the full blog, please follow this [link](#).