



Weekly Report for December 28, 2018

COMMENTS SUBMITTED IN RESPONSE TO THE SMALL BUSINESS ADMINISTRATION'S PROPOSED RULE ON THE HUBZONE PROGRAM, RIN 3245-AG38

On December 27, 2018, PiliroMazza submitted [comments](#) to the U.S. Small Business Administration's proposed rule regarding changes to the HUBZone Program. The proposed rule outlines a comprehensive overhaul to the program's current eligibility and compliance requirements.

GOVERNMENT CONTRACTING

A Nextgov [article](#) discussed the potentially significant impacts the government shutdown may have on government contractors, especially small businesses. The article recommended that contractors have preparations in place to weather a lapse in work. Representative Gerry Connolly (D-VA) commented that "President Trump's Christmas shutdown will be incredibly harmful to government contractors who support their federal employee partners but aren't made whole after the government reopens. These people have families, mortgages and other daily expenses." Federal employees exempted from furlough through the shutdown will not receive paychecks, but they will generally get back pay once the shutdown has ended. Federal contractors who are paid for the time worked, rather than salaried, cannot be paid for time they did not work, which may make budgets tighter for people, especially around the holidays. Another [article](#) by Nextgov recommended that vendors still submit questions and bids according to previously-posted deadlines, even if contracting officers are not there to receive them. Vendors should ensure submissions are timestamped and well-documented.

According to a Nextgov [article](#), the General Services Administration (GSA) will use the coming year to determine what its recently-announced, consolidated schedule will look like. The GSA announced in November that it would consolidate twenty-four multiple award schedules into a single contract vehicle. "Over this year, we'll start the consolidation of the MAS program," said Stephanie Shutt, director of the MAS Program Management Office, speaking at a recent GSA industry day. Ms. Shutt reported that the consolidation will likely be a five-year process, and moving existing contract holders to the new schedule will likely begin in January 2020. Ms. Shutt recommended, however, that companies waiting for a new contract or those looking to get on the schedule continue with business as usual and not halt their efforts or wait for the GSA to get caught up as it consolidates the award schedules.

According to a [report](#) by the Government Accountability Office (GAO), only three of the eleven agencies participating in the Small Business Innovation Research (SBIR) program awarded contracts and grants to small businesses majority-owned by multiple venture capital

operating companies, hedge funds, or private equity firms from fiscal years 2015 to 2018. Specifically, the Department of Health and Human Services' National Institutes of Health, the Department of Energy's Advanced Research Projects Agency-Energy, and the Department of Education's Institute for Education Sciences made a total of sixty-two awards and obligated \$43.6 million to such businesses during this period. This amount constituted between 0.1 percent and 2.7 percent of these agencies' obligations for the SBIR program each year.

A Government Executive [article](#) reported that Shay Assad, a senior Department of Defense (DoD) bureaucrat, is being reassigned to a post in Boston, Massachusetts, one unconnected to the contract negotiating team he has led for seven years. Per current and former officials, Mr. Assad will be moved from his position as director of defense pricing and contracting initiatives to a lateral position within the Defense Contract Management Agency in the Boston area in the coming weeks. The move comes after Mr. Assad championed a plan to change how the Pentagon pays defense firms, by tying contractor payments to their performance instead of to production milestones. According to the article, top Pentagon officials were not fully clued into the details of the plan, to which defense firms and lawmakers vocally objected. According to DoD officials, Mr. Assad's reassignment is also due, in part, to a reorganization of the DoD's acquisition directorate in which leaders determined they wanted the head of pricing to work at the Pentagon. Mr. Assad had an arrangement where he lived in Boston and commuted regularly to Washington, DC.

According to a Bloomberg Government article and Laura Criste, blockchain spending nearly tripled in Fiscal year 2018. Federal agencies invested more in blockchain technologies in fiscal 2018 than all previous years combined, and federal use of blockchain is expected to continue rising in fiscal 2019. This may mean that more money will go toward contractor implementations of the nascent technology. For example, the Department of Homeland Security released a new solicitation in November seeking solutions that use blockchain and distributive ledger technology to issue digital documentation in a way that prevents fraud, counterfeiting, and forgery.

LABOR AND EMPLOYMENT

Craig Leen was named Head of the Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP). Mr. Leen was formerly the acting director of this office, having taken over for the previous director, Ondray Harris, in July. The OFCCP audits government contractors across a wide range of industries—from technology and finance to manufacturing, construction, and health care—to ensure compliance with workplace affirmative action and nondiscrimination laws. According to a Bloomberg Government article, however, Mr. Leen, in less than six months as acting director, signed ten internal agency directives that have been viewed by the contractor community as being more “employer friendly,” including policy changes regarding the analysis of contractors' pay data, the speed of audits and settlements, and religious exemptions to discrimination liability.

According to a Memorandum of Understanding (MOU) released by the Equal Employment Opportunity Commission (EEOC) and the Department of Justice's (DOJ) Civil Rights Division, the two agencies will team up to fight harassment in state and local government. Both agencies enforce Title VII of the Civil Rights Act, and the [MOU](#) will allow further coordination between the two agencies. For example, the MOU will expedite action to help state and local government workers where quick intervention is needed to prevent harm, the statement said. In those cases, the DOJ will request necessary information from the EEOC

“to obtain an injunction, temporary or preliminary relief, in federal court for the affected employees, pending the final outcome of the charge,” according to the MOU.

According to a Bloomberg Government article, the EEOC and DOL will look to maintain the momentum gained around sexual harassment and workplace discrimination awareness through focused litigation and new approaches to conciliation in 2019. The EEOC and DOL’s Office of Federal Contract Compliance Programs anticipate more enforcement activity in the coming year, agency heads told Bloomberg Law before the shutdown. For employers, this could mean spending more money to defend against or settle agency bias allegations. Interestingly, the EEOC may lose its quorum in 2019, which could impact rulemakings and the agency’s ability to update its sexual harassment guidance.

RULES AND REGULATIONS

Final Rules

The Department of Homeland Security (DHS) issued a final rule that amends the Homeland Security Acquisition Regulation (HSAR) by removing the clause regarding small business subcontracting plan reporting because the requirements of this clause duplicate the requirements in a Federal Acquisition Regulation (FAR) clause. [83 Fed. Reg. 248, 67123.](#)

Proposed Rules

The DoD, GSA, and National Aeronautics and Space Administration (NASA) issued a proposed rule amending the FAR to implement an act to enhance whistleblower protection for contractor employees. The rule would make permanent the protection for disclosure of certain information. It also would clarify that the prohibition on reimbursement for certain legal costs applies to subcontractors, as well as contractors. [83 Fed. Reg. 246, 66223.](#)

The Department of Veterans Affairs (VA) issued a proposed rule that amends and updates the VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the Federal Acquisition Regulation (FAR), to remove any procedural guidance that is internal to VA into the VA Acquisition Manual (VAAM), and to incorporate new regulations or policies. The changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce the burden on contractors. In particular, this rulemaking revises VAAR concerning Special Contracting Methods and Solicitation Provisions and Contract Clauses. Comments are due by February 25, 2019. [83 Fed. Reg. 247, 66662.](#)

PILIEROMAZZA BLOGS

OHA Explains Which SDVOSB Eligibility Rules Apply in Its First VA SDVOSB Protest Decision

By Julia Di Vito

Starting October 1, 2018, the U.S. Small Business Administration's ("SBA") Office of Hearings and Appeals ("OHA") now has jurisdiction over all service-disabled veteran-owned small business ("SDVOSB") status protests when the procuring agency is the U.S. Department of Veterans Affairs ("VA"). Previously, SDVOSB status protests on SDVOSB set-aside solicitations

issued by VA were decided by VA. Now, OHA hears all SDVOSB status protests on VA procurements and has recently issued its first decision in an SDVOSB status protest in connection with a VA procurement. OHA refers to these SDVOSB status protests as "CVE Protests." In CVE Protest of Blue Cord Design and Construction, LLC, SBA No. CVE-100-P (2018), OHA denied a protest alleging that an SDVOSB awardee in a VA procurement was not controlled by a service-disabled veteran.

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