



Weekly Report for January 19, 2018

### **TOP OF THE NEWS**

#### **The Government Shutdown Top 10: Things You Should Know Before You Send Employees Home**

By [Nichole Atallah](#)

Ms. Atallah's blog creates an invaluable list for government contractors to keep in mind should the government shutdown actually come to fruition. The list discusses various labor and employment issues that could expose companies to liability, and ranges from state wage and hour law compliance to security clearance processing. For the complete list, please read the full article at <http://www.pilieromazza.com/blog>.

### **CONTRACTS**

#### ***Republicans Rally Ranks for Month-Long Spending Bill to Avoid Shutdown***

House Republicans have unveiled their stopgap measure to keep agencies funded through February 16 and avoid a shutdown when the current spending measure expires on January 19<sup>th</sup>. The month-long continuing resolution would be the fourth such temporary spending bill of fiscal 2018 and leave agencies without the certainty of full year appropriations for at least about 40 percent of the year. Its passage is not yet guaranteed, however, as House Democrats are once again threatening to withhold their support and some enclaves within the Republican ranks have expressed concerns over the measure. For more, visit [govexec.com](http://govexec.com)

### **VETERANS AFFAIRS**

#### ***VA Veteran-Owned Small Business (VOSB) Verification Guidelines***

The Department of Veterans Affairs (VA) is proposing to amend its regulations governing VA's Veteran-Owned Small Business (VOSB) Verification Program. The National Defense Authorization Act for Fiscal Year 2017 ("the NDAA"), Public Law 114-840, placed the responsibility for issuing regulations relating to ownership and control for the verification of VOSBs with the United States Small Business Administration (SBA). This proposed regulation seeks to remove all references to ownership and control and to add and clarify certain terms and references that are currently part of the verification process. The NDAA also provides that in certain circumstances a firm can qualify as VOSB or Service-Disabled Veteran Owned Small Business (SDVOSB) when there is a surviving spouse or an employee stock ownership plan (ESOP). For more information please visit [federalregister.gov](http://federalregister.gov).

## **CAPITOL HILL**

### **Engaging Energy: Small Business Resources at the Department of Energy**

On Thursday, January 18, 2018, the House Small Business Subcommittee on Agriculture, Energy, and Trade held a hearing, titled “Engaging Energy: Small Business Resources at the Department of Energy.” The purpose of this hearing was to examine the resources available to small businesses in the energy sector through the Department of Energy, and to analyze the effectiveness of these programs at minimizing confusion in the federal contracting process for small businesses.

The sole-witness panel consisted of Mr. Charles R. Smith, Director of the Office of Small and Disadvantaged Business Utilization, U.S. Department of Energy. Archived video footage of the hearing can be viewed [here](#).

### **Strengthening SBA’s 7(a) Loan Program**

On Wednesday, January 17, 2018, the House Small Business Committee held a hearing, titled “Strengthening SBA’s 7(a) Loan Program,” which focused on H.R. 4743, the Small Business 7(a) Lending Oversight Reform Act of 2018, a bipartisan bill that would allow the Small Business Administration to conduct greater oversight of the lending practices of financial firms that provide 7(a) loans.

Witnesses included Cindy Blankenship on behalf of the Independent Community Bankers of America, Patricia Husic on behalf of the American Bankers Association, Sonya McDonald on behalf of the National Association of Federally-Insured Credit Unions, and Tony Wilkinson of the National Association of Government Guaranteed Lenders. Archived video footage of the hearing can be viewed [here](#).

### **The State of the VA: A Progress Report on Implementing 2017 VA Reform Legislation**

On Wednesday, January 17, 2018, VA Secretary David Shulkin testified before the Senate Committee on Veterans’ Affairs in an oversight hearing titled “The State of the VA: A Progress Report on Implementing 2017 VA Reform Legislation.” Archived video footage of the hearing can be viewed [here](#).

## **RECENTLY ISSUED GAO DECISIONS**

**Herman Construction Group, Inc., B-415480 (January 5, 2018)**: The protester challenged the award of a contract resulting from a sealed bid procurement based on the argument that the agency improperly permitted the awardee to correct a mistake in its bid. In a sealed bid procurement, if a bidder wants to correct its bid after award because of a mistake, the bidder must submit clear and convincing evidence to prove the price it intended to bid. The awardee claimed that it used an erroneous amount for work that a subcontractor would perform and submitted its worksheet, the subcontractor’s quotation, and a statement from a company official explaining how the error occurred, as evidence. The protester argued that awardee failed to meet the clear and convincing standard required to upwardly correct its bid price, because the evidence submitted did not show it intended to include the subcontractor’s quote in its bid price, and it did not show a mistake occurred. GAO agreed with the protestor that none of the evidence submitted adequately illustrated that a mistake had been made, and found that the agency had erred in permitting the awardee to change its bid. GAO also

noted that although a mistake can often be inferred from a bid that is too low on its face, the initial bid submitted by the awardee was within the “acceptable” range standard.

GAO sustained the protest and recommended that the agency either make the award at the original bid price or consider whether withdrawal of the bid is appropriate.

## **PILIEROMAZZA NEW BLOGS**

### **The VA Proposes to Align Vets First Ownership and Control Eligibility Criteria with the SBA’s Regulations**

By [Kathryn Flood](#)

Ms. Flood’s blog discusses a Veteran’s Affairs (“VA”) proposed rule to eliminate its own ownership and control criteria for SDVOSB and VOSB eligibility under the Vets First contracting program, in order to align ownership and control requirements with the SBA’s SDVOSB program regulations. The proposed rule implements Congress’ mandate in the 2017 National Defense Authorization Action (“NDAA”) that the SBA be the sole agency responsible for the establishment of ownership and control requirements governing SDVOSB and VOSB eligibility. To read the full blog, please visit <http://www.pilieromazza.com/blog>.

### **New Tax Bill: Areas of Interest for Small Businesses**

By [David Medalia](#)

Mr. Medalia’s blog looks at the Tax Cuts and Jobs Act of 2017 (the “Act”) which he describes as “providing the most comprehensive tax reform in more than three decades.” Mr. Medalia analyzes how the Act reduces the total taxes, both on an entity and an individual level, for small and medium businesses, while also creating tax incentives to spend on capital expenditures through accelerated depreciation of both used and new property. Mr. Medalia’s blog further explores various highlights from the Act. To read more about the Tax Cuts and Jobs Act of 2017, please visit <http://www.pilieromazza.com/blog>.

### **And the False Claims Act Makes Three – 3rd Circuit Applies the More Employer-Friendly Title VII Retaliation and ADEA “But-for” Test in Determining Whistleblowing Retaliation Claim**

By [Paul Mengel](#)

Mr. Mengel’s blog explores how the Third Circuit decided that the “but for” test was the standard to be applied in the whistleblowing case, *DiFiore v. CSL Behring, LLC*, No. 16-4297, 2018 WL 266123 (3d Cir. Jan. 3, 2018). In his analysis, Mengel discusses the origin of the “but for” language, the employee’s argument to apply a less stringent standard, and ultimately the Third Circuit’s analysis of the Supreme Court’s ruling in *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009) and *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338 (2013) when reaching its final decision on the standard to be used. To read the full article, please visit <http://www.pilieromazza.com/blog>.