



Weekly Report for April 13, 2018

DEPARTMENT OF LABOR

US Department of Labor reinstates Wage and Hour opinion letters

The U.S. Department of Labor will reinstate the issuance of opinion letters, U.S. Secretary of Labor Alexander Acosta announced on Thursday, April 12. The action allows the department's Wage and Hour Division to use opinion letters as one of its methods for providing guidance to covered employers and employees. An opinion letter is an official, written opinion by the Wage and Hour Division of how a particular law applies in specific circumstances presented by an employer, employee or other entity requesting the opinion. The use of opinion letters had been a division practice for more than 70 years until being stopped and replaced by general guidance in 2010.

"Reinstating opinion letters will benefit employees and employers as they provide a means by which both can develop a clearer understanding of the Fair Labor Standards Act and other statutes," said Secretary Acosta. "The U.S. Department of Labor is committed to helping employers and employees clearly understand their labor responsibilities so employers can concentrate on doing what they do best: growing their businesses and creating jobs." [The division has established a webpage](#) where the public can see if existing agency guidance already addresses their questions or submit a request for an opinion letter. The webpage explains what to include in the request, where to submit the request, and where to review existing guidance. The division will exercise discretion in determining which requests for opinion letters will be responded to, and the appropriate form of guidance to be issued.

VETERANS AFFAIRS DEPARTMENT

Release of Information from Department of Veterans Affairs' Records

The Department of Veterans Affairs' (VA) issued a proposed rule governing the submission and processing of requests for information under the Freedom of Information Act (FOIA) and the Privacy Act in order to reorganize, streamline, and clarify existing regulations. The proposed rule intends to amend VA's regulations to ensure compliance with FOIA regulations. [83. Fed. Reg. 14613.](#)

Revise and Streamline Acquisition Regulation

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amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy that has been superseded by changes in the Federal Acquisition Regulation (FAR), to remove any procedural guidance that is internal to the VA into the VA Acquisition Manual (VAAM), and to incorporate new 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. The VA issued two separate proposed rules. The first rule revises VAAR Parts 844 – Subcontracting Policies and Procedures, and Part 845 – Government Property. [83 Fed. Reg. 67, 14833.](#) The second revises VAAR parts 831 –

Contract Cost Principles and Procedures and 833 – Protests, Disputes, and Appeals, as well as affected parts 852 – Solicitation Provisions and Contract Clauses, and 871 – Loan Guaranty and Vocational Rehabilitation and Employment Programs. [83 Fed. Reg. 60, 14826](#).

DEPARTMENT OF DEFENSE

Defense Federal Acquisition Regulation Supplement

Department of Defense (DoD) is issuing a final rules to amend the Defense Federal Acquisition Regulation Supplement(DFARS):

- 1) to relocate the definition of information technology within the DFARS, [83 Fed. Reg. 72, 15994](#);
- 2) to remove outdated coverage of consolidation of contract requirements, [83 Fed. Reg. 72, 15995](#);
- 3) to implement sections of the National Defense Authorization Acts for Fiscal Years 2015, 2016, and 2017 to provide revisions to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, [83 Fed. Reg. 72, 15996](#);
- 4) to implement a section of the National Defense Authorization Act for Fiscal Year 2016, clarifying the competition requirements for the acquisition of religious-related services contracts on a United States military installation, [83 Fed. Reg. 72, 16001](#);
- 5) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 that prohibits use of funds for certain programs and projects of the DoD in Afghanistan that cannot be safely accessed by United States Government personnel, [83 Fed. Reg. 72, 16003](#);
- 6) to remove limiting language related to educational service agreements. This deletion will allow DoD to make agreements that permit payment for Masters of Laws degrees and other legal training programs, in accordance with applicable law, regulation, and policy. [83 Fed. Reg. 72, 16004](#).

GOVERNMENT ACCOUNTABILITY OFFICE

Government Accountability Office, Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts

This final rule amends the Government Accountability Office's (GAO) Bid Protest Regulations, promulgated in accordance with the Competition in Contracting Act of 1984, to implement the requirements in section 1501 of the Consolidated Appropriations Act for Fiscal Year 2014, which was enacted on January 14, 2014. These amendments implement the legislation's direction to establish and operate an electronic filing and document dissemination system for the filing of bid protests with GAO. The amendments also include the addition of a mandatory \$350 filing fee for all protests filed with GAO. The amendments also include administrative changes to reflect current practice, to streamline the bid protest process, and to make clerical corrections. [83. Fed. Reg. 63](#).

GOVERNMENT CONTRACTING

Pentagon's Delayed Report on Services Contracts Draws Union Ire

According to an article in [govexec.com](#), the massive National Defense Authorization Act for fiscal 2018 contained language requiring the Pentagon to provide more detail on its spending plans for \$144 billion in services contracts. But in the Trump administration's fiscal 2019 budget released in February, the document that provides the most comprehensive information on services contracting was missing. The omission was spotted by specialists at the American Federation of Government

Employees, who pointed out that last year's submission carried more detail, while this year's was limited to an "advisory and assistance services" document with simple line items.

Multiple Defendants Charged in Fraud and Money Laundering Scheme Involving Over \$200 Million in Small Business Contracts

According to a Department of Justice press release, United States Attorney Matthew D. Krueger for the Eastern District of Wisconsin announced that on April 3, 2018, a federal grand jury returned a twenty-two count indictment charging three defendants with a 12-year fraud and money laundering scheme involving over \$200 million in government-funded contracts intended to benefit small businesses. The indicted defendants were charged with a conspiracy to commit mail and wire fraud. According to the indictment, the conspiracy involved operating construction companies with straw owners who qualified as a disadvantaged individual or as a service-disabled veteran, but who did not actually control the companies. The conspirators then fraudulently obtained small business program certifications to win government-funded contracts to which they were not entitled. For the full press release, please visit [Justice.gov](https://www.justice.gov).

DEPARTMENT OF TREASURY

Department of the Treasury Acquisition Regulations; Tax Check Requirements

This rule finalizes, without change, an interim rule that amended the Department of the Treasury Acquisition Regulation (DTAR) by adding a subpart titled "Responsible Prospective Contractor" and a paragraph concerning Representation and certifications regarding responsibility matters, for the purpose of directing IRS contracting officers to the newly added DTAR subpart titled "Tax Check Requirement," which prescribes the policies and procedures for performing a tax check on the apparent successful offeror in order to determine eligibility to receive an award. [83 Fed. Reg. 15502](https://www.federalregister.gov/documents/2018/04/11/83-fed-reg-15502).

U.S. SUPREME COURT

High Court Endorses Broader View of FLSA Exemptions

As part of its ruling Monday that auto service advisers are overtime-exempt under the Fair Labor Standards Act (FLSA), the U.S. Supreme Court jettisoned half-century-old precedent that called for narrowly construing exemptions to the FLSA and likely made it easier for employers who claim exemptions to overcome legal challenges. In a 5-4 decision authored by Justice Clarence Thomas, the high court ruled that employees at a California auto dealership—Encino Motorcars LLC—who advise customers about repair work, fall under an FLSA exemption that excludes "any salesman, parts-man or mechanic primarily engaged in selling or servicing automobiles" from overtime pay. For more information, please visit [lextalk.com](http://www.lextalk.com).

LABOR AND EMPLOYMENT

Rollback of Obama NLRB's Legacy Hits Speed Bump

One day after the U.S. Department of Labor's self-audit pilot program for employers went live, New York Attorney General Eric Schneiderman issued a [statement](#), in which he vowed that his office will continue prosecuting alleged wage theft under state law even if businesses participate in the voluntary federal program. The Department of Labor Wage and Hour Division announced last month

that it was implementing its Payroll Audit Independent Determination, program on a trial basis. The program will allow employers to quickly pay back wages to workers in full, for accidental overtime and minimum wage violations under the Fair Labor Standards Act, thereby avoiding fines and litigation expenses.

CAPITOL HILL

House Committee on Veterans' Affairs Leaders Introduce Bipartisan Bill to Stabilize VA's Purchasing of Medical Supplies

In a press release, House Veterans' Affairs Subcommittee on Oversight and Investigations Chairman Jack Bergman (R-Mich.), along with House Committee on Veterans' Affairs members Rep. Scott Peters (D-Calif.), Rep. Jim Banks (R-Ind.), and Rep. Neal Dunn (R-Fla.) introduced legislation to correct problems with the Department of Veterans Affairs' (VA's) system for purchasing medical supplies. Chairman Bergman released the following statement:

Guaranteeing our Veterans top quality health care means strengthening every aspect of how the VA does business. Unfortunately, the system for purchasing medical and surgical supplies has gone off track because unqualified administrators were deciding which products physicians get to use. Our legislation will put medical experts back in charge and prevent the VA from making the same mistakes again.

If enacted, this bill would direct VA to correct the problems with their medical-surgical formulary using input from medical professionals with relevant expertise rather than administrative staff. It would also prevent VA from outsourcing the creation of the formulary. For the full press release, please visit veterans.house.gov.

The State of Trade for America's Small Businesses

On April 11, 2018, the House Committee on Small Business heard from a panel of stakeholders on the state of international trade for America's 30 million small businesses. "We must do more to make it easier for small businesses to engage in foreign markets. About one percent of United States small businesses export—around 300,000 of them and, in 2016, exports reached 2.2 trillion dollars and supported nearly 11.5 million jobs," said Chairman Steve Chabot.

You can find more information [here](#).

Community Support: Entrepreneurial Development and Beyond

On April 12, 2018, the House Small Business Subcommittee on Investigations, Oversight, and Regulations held a hearing to examine the role small businesses play in helping communities thrive. You can find more information [here](#).

Chairman Roe, Ranking Member Walz Announce First-Ever HVAC Member Day

On April 11, 2018, the leaders of the House Committee on Veterans' Affairs announced its first ever bipartisan member day, to give Members of Congress the opportunity to testify before the Committee about veterans issues in their districts. The hearing will take place at 10:00 a.m. ET, Wednesday, May 16, 2018, in Room 334, Cannon House Office Building. You can find more information [here](#).

RECENTLY ISSUED GAO DECISIONS

Brand Name or Equal--Unequal or incomparable to the brand name item listed in the solicitation.

Savannah Cleaning Systems, Inc., B-415817 (March 27, 2018): In this protest, the protester argued that the agency unreasonably evaluated the awardee's quotation as offering pressure washers that were equal or comparable to the brand name item listed in the solicitation, and that the award was unreasonable because the pressure washers quoted by the awardee were not on its schedule contract. GAO agreed, finding that because the agency accepted a quotation that did not comply with the RFQ's identified requirements, the protester was not afforded an opportunity to compete on an equal basis; and, the awardee failed to include the quoted washers on their schedule contract, a requirement when an agency announces its intention to order from an existing Federal Supply Schedule. GAO sustained on both protest grounds.

PILIEROMAZZA BLOG ARTICLES

The Future is Here: GAO Bid Protests to Be Filed Electronically Starting May 1, 2018

By Sam Finnerty

On April 2, 2018, the U.S. Government Accountability Office ("GAO") issued a final rule, which, effective May 1, 2018, implements an electronic filing system for bid protests known as the Electronic Protest Docketing System ("EPDS"). Historically, GAO has only accepted protest filings via e-mail, fax, regular mail, or hand delivery. However, in 2014, Congress directed GAO to establish an electronic filing and dissemination system. Thus, the concept for EPDS was born. After years of development, EDPS was taken for a "test drive" when, in early February 2018, GAO implemented a pilot program that identified a select number of protests to be administered using the new electronic platform. Initial feedback indicates that the system is quite similar to PACER, the electronic filing system that has been utilized by the federal court system for more than 25 years. [\[read more\]](#)

DoD Issues Class Deviation to Implement Enhanced Postaward Debriefing Requirements from FY 2018 NDAA

By Jackie Unger

On Thursday, March 22, the Department of Defense ("DoD") issued a Federal Acquisition Regulation ("FAR") class deviation in light of the enhanced postaward debriefing rights required by Section 818 of the National Defense Authorization Act ("NDAA") for Fiscal Year 2018. The NDAA, which was signed into law on December 12, 2017, requires revisions to the Defense Federal Acquisition Regulation Supplement ("DFARS") to implement a number of changes to debriefing requirements for DoD procurements. [\[read more\]](#)