



Weekly Report for December 1, 2017

GOVERNMENT CONTRACTS

PROTESTS

If the Federal Watchdog Office Works for Contract Protestors, Why the Decline?

According to an article posted in the Federal Contracts Report, several reasons could explain the decrease in bid protest filings in 2017 despite an “effectiveness” rate showing that the Federal Watchdog office regularly provides relief to contractors.

There has been a 7% drop in filing bid protests in fiscal 2017—from 2,789 to 2,596—and there are various reasons available as likely explanations; including but not limited to, the disqualification of overly enthusiastic protestors, raising the minimum contract value threshold for valid protests, and reliance on the U.S. Court of Federal Claims.

This drop occurred despite the GAO’s 47% effectiveness rate for protestors. The rate comes directly from instances in which protestors convinced: 1) the GAO to sustain a protest; or 2) an agency to fix a procurement error with corrective action. With the effectiveness rating remaining constant over the last two fiscal years, and its gradual increase over the previous five fiscal years, it appears that contractors are becoming more selective when deciding when to file a protest. For more information see the *Federal Contracts Report Vol. 108, NO. 19, 474-475*.

SET-ASIDES

What’s in and what’s out in NDAA?

According to an article from Set-Aside Alert, there are new rules to expand HUBZones and to increase micro-purchase and simplified acquisition limits. There are also new restrictions on agencies from getting credit for small business contracts, and the SCORE program for small businesses did not get reauthorized, and a senate proposed provision to lower the employees-living-in-HUBZone requirements to 33% was dropped. Those are just a few of the latest developments in the National Defense Authorization Act for Fiscal 2018 (NDAA).

A conference of House and Senate members has negotiated a final version of the NDAA. The Conference Report version of the bill can be found [here](#). For more information see the *Set Aside Alert Vol. 25, No. 23, 2*.

Will NDAA’s “Amazon” market hurt small business?

According to an article in the same Set-Aside Alert, even though the latest version of the National Defense Authorization Act for Fiscal 2018 (“NDAA”) waters down the so-called ‘Amazon’ provision, its still presents a potential threat to GSA Multiple-Award Schedule contract holders, many of which are small businesses.

Section 846 of the NDAA authorizes the development of one or more e-commerce platforms for commercial items that could be purchased by the Defense Department. The newer version requires substantially more market and legal research in order to fulfill the requirements of the section. The NDAA says that GSA must assess the impact on small business set-asides and GSA schedule holders. However, specialists are warning small business GSA schedule holders to monitor the marketplace carefully because it could have major repercussions on them.

GAO

RECENTLY ISSUED BID PROTEST DECISIONS

Fluor Federal Solutions, LLC, B-410486.9: In this protest, the protestor challenged the award of a base operations services contract based on, among other arguments, that the agency engaged in disparate treatment in connection with the evaluation of staff recruitment and retention. The protestor argued that the agency scrutinized its proposal to recruit 95% of the incumbent staff, while the agency failed to give meaningful consideration to similar aspects of the awardee's proposal, or how the awardee's proposed approach would affect the retention of employees, as required by the RFP. GAO agreed that the agency evaluated the offerors disparately under the staffing and resources factor. GAO sustained the protest, and recommended that the agency reevaluate the proposals giving them equal scrutiny. The full decision can be found [here](#).

CAPITOL HILL

“Senate Bill Seeks \$1.8 Billion for DHS’ Cyber Mission” *Nextgov*, November 21, 2017. Retrieved from nextgov.com

On November 21, 2017 Senate Appropriations Committee Chairman Thad Cochran released the first draft of an appropriations bill. Although this bill is not identical to the House's appropriations legislation, both bills would provide \$1.8 billion for the Department of Homeland Security's cyber operations wing, indicating that this funding level is agreed upon and will likely be included in the final legislation. This funding bill provides \$731 million for upgrading and maintaining cybersecurity measures for federal computer networks, \$257 million for cyber incident response within the private sector, and \$341 million to help banks, airports, and other critical infrastructure against cyberattacks.

Tax Reform and Small Businesses

On November 28, 2017, SBA Administrator Linda McMahon joined Senate Republicans at an event to highlight issues faced by small businesses relating to tax reform. Highlights from the discussion include Senator John Cornyn's mention of changing "pass-through" taxation for S Corporations, as well as Senator Deb Fischer discussed her proposal for a 25% tax credit on paid family leave for small businesses, which she said is geared toward helping hourly workers. Also in attendance at this event were representatives from several business associations. Archived video footage can be viewed [here](#).

There are varying opinions on whether current tax reform efforts would achieve the Committee's mission and help small businesses. On November 20th, Senate Small Business Committee Democrats released a statement of opposition to the Republicans' tax plan, which you can find [here](#).

Some opponents of the tax plan, including Senator Ron Johnson (R-WI), claim that the bill prioritizes traditional corporations over "pass-through" businesses, which some say would hurt small business in favor of big business. Further, recent polls have shown that Americans favor individual tax breaks, but do not support corporate tax breaks. More information can be found [here](#).