



Weekly Report for May 25, 2018

GOVERNMENT CONTRACTING

Contractors Oppose Proposed Limit on Federal Bid Protests

According to an article in govexec.com, the Senate Armed Services Committee on May 22, 2018 began its markup of the fiscal 2019 National Defense Authorization Act, and a contractors group was pushing committee leaders to reject a Pentagon proposal to curb time-consuming bid protests. Seeking to eliminate what some senators call “frivolous” protests and what acquisition officials call “forum shopping,” the Defense Department this spring pressed for limiting the ability of contractors who unsuccessfully sought an award and are rejected by the Government Accountability Office to then continue their protest at the Court of Federal Claims. The plan would limit the so-called “second bite at the apple” in the court to within 10 days of knowing (or when they should have known) they had the basis for a protest.

The Federal Government Achieves Small Business Contracting Goal for the Fifth Consecutive Year with Record-Breaking \$105 Billion to Small Businesses

According to a [press release](#), the U.S. Small Business Administration announced that the federal government met its small business federal contracting goal for the fifth consecutive year awarding 23.88 percent in federal contract dollars to small businesses totaling \$105.7 billion, an increase of \$5 billion. This marks the first time more than \$100 billion in prime contracts has been awarded to small businesses. The federal government earned an “A” on this year’s government-wide scorecard. “I am happy to report that for the fifth consecutive year, the federal government has not only met and exceeded its small business contracting goal, but it has awarded \$105 billion to small businesses for the first time earning the government an A on SBA’s scorecard for this remarkable achievement,” said SBA Administrator Linda McMahon. “This grade reflects significant efforts by federal agencies toward meeting the 23 percent statutory goal to award prime contracts to small businesses. Every contract that gets in the hands of a small business owner is a win-win for the business, creating jobs in their communities, and boosting the nation’s economy.”

Agencies Need to Take More Risks in Acquisition

According to an article on Govexec.com, the recently released president’s management agenda states that efforts to transform government through major acquisitions are hamstrung by processes that “remain captive to a risk-averse culture that rewards compliance over creativity.” The Federal Acquisition Regulation contains a mind-numbing 1,917 pages of policies and procedures that government acquisition officials must follow when buying goods and services. Navigating these rules can be daunting for contracting officers, who often are fearful of something going wrong. But even within the constraints, there is room for flexibility—approaches that deviate from the norm but hold potential to achieve better quality and innovative outcomes while preserving competition, transparency and accountability. Following a path toward innovation requires overcoming the fear of failure and the willingness to take risks within reasonable bounds.

LABOR AND EMPLOYMENT

Supreme Court rules employers can ban class action lawsuits in arbitration

According to an article on [Politico.com](https://www.politico.com), the U.S. Supreme Court cleared the way for employers nationwide to require workers to sign away their right to pursue class actions in a blockbuster ruling that attorneys on both sides of the bar agree will translate to millions more workers being bound by class waivers. Authored by Justice Neil Gorsuch, a five-justice majority ruled in a trio of cases that involved Epic Systems Corp., Murphy Oil USA Inc. and Ernst & Young LLP that businesses aren't violating the National Labor Relations Act if they force workers to forgo the ability to pursue class actions by including class waivers in arbitration agreements they must sign as a condition of employment. Instead, the justices held that mandatory arbitration agreements must be enforced under the Federal Arbitration Act according to their terms, even if those terms include individual arbitration.

CAPITOL HILL

House Passes Service-Disabled Veterans Small Business Continuation Act

On May 21, 2018, the House of Representatives passed H.R. 5044, the Service-Disabled Veterans Small Business Continuation Act, which originated in the House Small Business Committee and was introduced by Chairman Steve Chabot. If enacted, this legislation would allow surviving spouses of service-disabled veterans to continue operating their spouse's small business as service-disabled veteran-owned small businesses for a period of time after the veteran spouse's passing. The bill was passed in the House of Representatives by a voice vote, and currently awaits consideration from the Senate Committee on Veterans' Affairs. You can monitor the progress of this legislation [here](#).

Cardin Statement on Annual Small Business Contracting Goals

On Wednesday, May 23, 2018, Senator Ben Cardin, the Ranking Member of the U.S. Senate Committee on Small Business & Entrepreneurship, commented on the Small Business Administration's ("SBA") 2017 assessment of how well federal agencies are meeting small business federal contracting goals. According to SBA, in 2017 the federal government met its small business federal contracting goal for the fifth consecutive year (awarding \$105.7 billion). However, the percentage of small business prime contracts awarded to women-owned small businesses, small disadvantaged businesses, and businesses located in SBA's Historically Underutilized Business Zones each declined from 2016, failing to reach their respective 2017 contracting goals. You can find more information [here](#).

Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protections in Their Businesses

On May 16, 2018, the House Small Business Committee held a hearing to examine the ways in which small business owners can leverage patents, trademarks, copyrights, and trade secrets in order to maximize the success of their businesses. You can find more information, including archived video footage of the hearing, [here](#).

PILIEROMAZZA BLOGS

Who Are the "Key Management Personnel" for Purposes of My Company's Facility Clearance?

By Megan C. Connor

Whether a federal contractor can be cleared depends on its people. Specifically, whether a company can obtain a facility clearance ("FCL") depends on the personnel clearances ("PCL") of the company's Key Management Personnel ("KMP"). [\[more\]](#)

New Maryland Sexual Harassment Law Creates Important Implications for Employers Both Inside and Outside the State

By Matthew E. Feinberg

On May 15, 2018, Maryland Governor Larry Hogan signed into law the Disclosing Sexual Harassment in the Workplace Act of 2018. Described by bill sponsor Craig Zucker (D-Montgomery) as a "national model," the law, which goes into effect on October 1, 2018, is the first of its kind in the Mid-Atlantic region. And, it has important implications, not only for employers in the State of Maryland, but for out-of-state employers who allow employees to telecommute from, work from time to time in, or participate in events in Maryland. [\[more\]](#)