



Weekly Report for October 20, 2017

## **GOVERNMENT CONTRACTS**

**“Conferees Will Determine Fate of Defense Bill Provision to Deter Frivolous Contractor Bid Protest”** *Government Executive*, October 13, 2017. Retrieved from [govexec.com](http://govexec.com)

Senators, as they have in past bills, inserted language in their fiscal 2018 National Defense Authorization Act that would affect the three-decade-old bid protest process in two ways:

1. Companies with more than \$100 million revenues in the previous year's which file unsuccessful protests against contract awards to a competitor would be required to pay the Defense Department the costs of processing the protest at Defense and at the Government Accountability Office, which adjudicates the protests. It is called the “loser pays” provision.
2. Second, the Senate bill calls for incumbent contractors who file a protest to have all payments above incurred costs withheld on any bridge contracts or temporary contract extensions awarded to that contractor as a result of a delay in award resulting from bid protests. The language is not in the House version.

The goal of the proposed changes would be to shift some of the costs of the protest system to the private sector, and reduce the frequency of frivolous protests by large companies and large awards.

### ***Employee Benefits Security Administration, Department of Labor Proposed Rule***

The Department of Labor (“DOL”) proposes to delay for ninety (90) days—through April 1, 2018—the applicability of the Final Rule amending the claims procedure requirements applicable to ERISA-covered employee benefit plans that provide disability benefits. The Final Rule was published in the Federal Register on December 19, 2016, and became effective on January 18, 2017. The Final Rule currently is scheduled to apply to claims for disability benefits under ERISA-covered employee benefit plans that are filed on or after January 1, 2018.

Following publication of the Final Rule, various stakeholders and members of Congress asserted that it will drive up disability benefit plan costs, cause an increase in litigation, and in so doing impair workers' access to disability insurance benefits. Pursuant to

Executive Order 13777, the DOL has concluded that it is appropriate to give the public an additional opportunity to submit comments and data concerning potential impacts of the Final Rule. The DOL will carefully consider the submitted comments and data as part of its effort to examine regulatory alternatives that meet its objectives of ensuring the full and fair review of disability benefit claims while not imposing unnecessary costs and adverse consequences.

The DOL accordingly seeks public comment on a proposed 90-day delay of the applicability of the Final Rule in order to solicit additional public input and examine regulatory alternatives. If this proposal is finalized, the amendments made on December 19, 2016, would become applicable to claims for disability benefits that are filed after April 1, 2018, rather than January 1, 2018. The proposed rule can be found [here](#).

## ***SUPREME COURT DECISIONS***

**“U.S. Supreme Court Denies Petition for Certiorari on Constitutional Challenge to 8(a) Program”** *PM Legal Minute*, October 17, 2017. Retrieved from [piliromazza.com](http://piliromazza.com)

On October 16, 2017, the U.S. Supreme Court denied the petition for a writ of certiorari filed by Rothe Development, Inc. in [Rothe Development, Inc. v. Department of Defense & Small Business Administration](#). Rothe, a non-minority-owned federal contractor, challenged the SBA's 8(a) Program, a program which gives benefits to small business concerns owned and controlled by socially and economically disadvantaged individuals. Rothe alleged that the statutory basis of the 8(a) Program denies it, a company not owned or controlled by socially and economically disadvantaged individuals, equal protection of the law, in violation of the equal protection component of the Due Process Clause of the Fifth Amendment. Specifically, Rothe alleged that it could not compete on equal footing with companies owned by minorities. Rothe effectively undermined the program and brought the long standing dispute regarding the entire validity of the 8(a) Program to the forefront of the Federal courts.

## ***CAPITOL HILL***

**Reactions to the Nomination of SBA Inspector General from both the House Small Business Committee and the Senate Committee on Small Business and Entrepreneurship.** Retrieved from [smallbusiness.house.gov](http://smallbusiness.house.gov) and [sbc.senate.gov](http://sbc.senate.gov)

House Committee on Small Business Chairman Steve Chabot (R-OH) praised the White House's decision to nominate Hannibal “Mike” Ware to serve as the Small Business Administration (“SBA”) Inspector General. Senator Jeanne Shaheen (D-NH), the lead Democrat on the U.S. Senate Committee on Small Business & Entrepreneurship, today issued the following statement on the nomination of Hannibal Ware, President Trump's choice to be Inspector General of the U.S. Small Business Administration:

"I look forward to reviewing Mr. Ware's record and examining his credentials. SBA's Office of the Inspector General provides critical auditing and investigative services to ensure the integrity of SBA programs and the proper use of taxpayer dollars. Any person in charge of this office must be fully independent, dedicated to improving SBA's overall performance and committed to weeding out waste, fraud and abuse."

**"Fostering Women's Entrepreneurial Success"** *House Small Business Committee Press Release*, October 12, 2017. Retrieved from [smallbusiness.house.gov](http://smallbusiness.house.gov)

On October 12, 2017, Members of the House Small Business Subcommittee on Health and Technology heard from a panel of women experienced in the challenges women entrepreneurs face in today's economy, as well as the available resources to support women-owned small businesses.

"While women entrepreneurs face many challenges, one major issue women owners face is access to adequate financing opportunities. Men typically launch their businesses with twice the capital women do, and less than 10 percent of all venture funds are granted to women-led businesses. The matter of access to capital is of particular concern to me, as it is a persistent issue among my constituents in American Samoa," said Subcommittee Chairman Aumua Amata Coleman Radewagen.

## **OTHER NEWS**

**"Women Still Underrepresented in the Highest-Paid Federal Jobs"** *Government Executive*, October 17, 2017. Retrieved from [govexec.com](http://govexec.com)

In 2014, the U.S. Office of Personnel Management ("OPM") conducted a study finding that between 1992 and 2012, federal agencies had closed the gender pay gap by over 50%. Researchers have attributed the remaining gap to differences in occupation, suggesting that men and women are beginning to receive equal pay for equal work.

That said, in March 2017, *Government Executive* conducted an analysis of the highest-paid jobs within the federal government, and found that women are still underrepresented in the top salary jobs. Although researchers have speculated that the cultural shifts needed for a fully inclusive society can take time, OPM has not issued an official statement of conclusion.