



Weekly Report for June 17, 2016

GOVERNMENT CONTRACTS

VA Required to Put Veterans First in Kingdomware Supreme Court Decision

In a big win for veteran-owned small businesses, the Supreme Court ruled on June 16 unanimously in favor of Kingdomware Technologies, Inc., in its case against the Department of Veterans Affairs (“VA”).

Kingdomware had brought suit challenging the VA’s failure to set aside an order under the Federal Supply Schedule (“FSS”) for veteran-owned small businesses. In the ensuing litigation, the VA took the position that it was not required to reserve FSS orders for SDVOSBs or VOSBs because the mandates of the “Veterans First” law did not apply to FSS. While the VA was successful with its arguments before two lower courts, the Supreme Court disagreed.

In a fairly straight-forward ruling, the Supreme Court found that the Veterans First law did not contain any exceptions for FSS orders and, therefore, the requirement to give preference to SDVOSBs and VOSBs extends to FSS orders. The Supreme Court also rejected the VA’s argument that an order under the FSS is not a contract; the Court found such orders are clearly contracts. And, in overturning the lower court’s analysis, the Supreme Court held that the required use of veterans’ preferences applies to all VA acquisitions, and regardless of whether the VA has met its annual veteran contracting goals.

The case will now be remanded to the Court of Appeals for the Federal Circuit for further proceedings consistent with the Supreme Court’s ruling.

DEPARTMENT OF LABOR

DOL Issues Final Rule on Discrimination on the Basis of Sex

The U.S. Department of Labor’s Office of Federal Contract Compliance Programs has published this final rule to detail obligations that covered federal government contractors, subcontractors, federally-assisted construction contractors, and subcontractors must meet under Executive Order 11246, as amended, to ensure nondiscrimination in employment on the basis of sex, and to take affirmative action to

ensure that applicants and employees are treated without regard to their sex. This rule substantially revises the existing Sex Discrimination Guidelines. The provisions in this final rule articulate well-established case law and/or applicable requirements from other federal agencies and, therefore, the requirements for affected entities are largely unchanged by this rule, [81 Fed. Reg. 39108](#). These regulations are effective August 15, 2016.