



Weekly Report for October 7, 2016

GOVERNMENT CONTRACTS

Prohibition on Contracting With Corporations with Delinquent Taxes or a Felony Conviction

The Department of Defense (“DOD”), General Services Administration (“GSA”), and National Aeronautics and Space Administration (“NASA”), have adopted as final, without changes, an interim rule amending the Federal Acquisition Regulation (“FAR”) to implement sections of the Consolidated and Further Continuing Appropriations Act, 2015, to prohibit the federal government from entering into a contract with any corporation having a delinquent federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the government, [81 Fed. Reg. 67728](#). This final rule became effective on September 30, 2016.

Updating Federal Contractor Reporting of Veterans’ Employment

DOD, GSA, and NASA have adopted as final, without change, an interim rule amending the FAR to implement a final rule issued by the Department of Labor’s (“DOL”) Veterans’ Employment and Training Service (“VETS”) that replaced the VETS-100 and VETS-100A Federal Contractor Veterans’ Employment Report forms with the VETS-4212, Federal Contractor Veterans’ Employment Report form, [81 Fed. Reg. 67731](#). This final rule became effective on September 30, 2016.

Non-Retaliation for Disclosure of Compensation Information

DOD, GSA, and NASA have issued an interim rule amending the FAR to implement Executive Order (“E.O.”) 13665, entitled “Non-Retaliation for Disclosure of Compensation Information.” This interim rule also implements the final rule issued by the Office of Federal Contract Compliance Programs of the DOL to implement E.O. 13665. The DOL final rule was published in the Federal Register at 80 FR 54934, on September 11, 2015, entitled “Government Contractors, Prohibitions against Pay Secrecy Policies and Actions.” The DOL rule revises 41 C.F.R. pt. 60-1. E.O. 11246, originally issued on September 24, 1965, establishes nondiscrimination and affirmative action obligations in employment for federal contractors and subcontractors. It prohibits employment discrimination because of race, color, religion, sex, sexual orientation, gender identity, or national origin. E.O. 13665 amends E.O. 11246 to provide for a

uniform policy for the federal government to prohibit federal contractors from discriminating against employees and job applicants who inquire about, discuss, or disclose their own compensation or the compensation of other employees or applicants, [81 Fed. Reg. 67732](#). Comments to this interim rule are due by November 29, 2016.

Sole Source Contracts for Women-Owned Small Businesses

DOD, GSA, and NASA have adopted as final, with a minor edit, an interim rule amending the FAR to implement regulatory changes made by the Small Business Administration (“SBA”) that provide for authority to award sole source contracts to economically disadvantaged women-owned small business concerns and to women-owned small business concerns eligible under the Women-Owned Small Business Program, [81 Fed. Reg. 67735](#). This final rule became effective on September 30, 2016.

Consolidation and Bundling

DOD, GSA, and NASA have issued a final rule to amend the FAR to implement sections of the Small Business Jobs Act of 2010 and regulatory changes made by the SBA, which provide for a government-wide policy on consolidation and bundling, [81 Fed. Reg. 67763](#). This final rule will become effective on October 31, 2016.

Amendment Relating to Multi-Year Contract Authority for Acquisition of Property

DOD, GSA, and NASA are amending FAR 17.1 to implement Section 811 of the NDAA 2016. Section 811 amended subsection (a)(1) of 10 U.S.C. § 2306(b) by striking “substantial” and inserting “significant.” This rule makes conforming changes at FAR 17.105-1(b)(1) to state that the head of an agency may enter into a multi-year contract for supplies, if the use of such a contract will result in significant savings of the total estimated costs of carrying out the program through annual contracts. This change applies to the DOD, NASA, and the Coast Guard, [81 Fed. Reg. 67773](#). This final rule will become effective on October 31, 2016.

Contractors Performing Private Security Functions

DOD, GSA, and NASA have issued a final rule amending FAR 25.302 to remove the DOD-unique requirements for contractors performing private security functions outside the United States and provide a definition of “full cooperation” within FAR 52.225-26 in order to affirm that the contract clause does not foreclose any contractor rights arising in law, the FAR, or the terms of the contract when cooperating with any government-authorized investigation into incidents reported pursuant to the clause, [81 Fed. Reg. 67776](#). This final rule will become effective on October 31, 2016.

Section of Bipartisan Budget Act of 2013 Implemented

DOD, GSA and NASA have adopted as final, with changes, an interim rule amending the FAR to implement a section of the Bipartisan Budget Act of 2013. The final rule revises the allowable cost limit relative to the compensation of contractor and subcontractor employees. Also, this final rule implements the narrowly targeted exception to this allowable cost limit for scientists, engineers, or other specialists upon an agency determination that such exceptions are needed to ensure that the executive

agency has continued access to needed skills and capabilities, [81 Fed. Reg. 67778](#). This final rule became effective on September 30, 2016.

Federal Acquisition Circular 2005-91

This document summarizes the FAR rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (“FAC”) 2005-91. A companion document, the Small Entity Compliance Guide, follows this FAC, [81 Fed. Reg. 67726](#).

Small Entity Compliance Guide

This document is issued under the joint authority of DOD, GSA, and NASA. This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005-91, which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared, [81 Fed. Reg. 67781](#).

Department of Defense’s (“DOD”) Defense Industrial Base (“DIB”) Cybersecurity (“CS”) Activities

This final rule responds to public comments and updates DOD's DIB CS Activities. This rule implements mandatory cyber incident reporting requirements for DOD contractors and subcontractors who have agreements with DOD. In addition, the rule modifies eligibility criteria to permit greater participation in the voluntary DIB CS information sharing program, [81 Fed. Reg. 68312](#). This final rule will become effective on November 3, 2016.

SMALL BUSINESS ADMINISTRATION

Early Stage Business Investment Companies – Webinar on Proposed Rule

The SBA is holding a public webinar regarding its Early Stage Small Business Investment Companies proposed rule, which was published on September 19, 2016. The webinar will describe the changes proposed in the rulemaking and answer questions regarding the proposed rule, [81 Fed. Reg. 69012](#). The webinar will be held on October 12, 2016, beginning at 1:00 p.m. Attendees must pre-register by October 10, 2016, at 11:59 p.m.

Small Business Government Contracting and National Defense Authorization Act of 2013 Amendments

The SBA is correcting a final rule that appeared in the Federal Register on May 31, 2016 (81 Fed, Reg. 34243). The rule described the limitations on subcontracting that apply to set aside contracts. The rule provides that the limitations on subcontracting apply to small business set asides above \$150,000 and to 8(a), HUBZone, Service-Disabled Veteran-Owned (“SDVO”) or Women-Owned Small Business (“WOSB”) set asides. The \$150,000 threshold appears twice in 13 C.F.R § 125.6(a), and, thus, could be misinterpreted as applying the threshold to 8(a), HUBZone, SDVO or WOSB set-

asides. This action deletes the second \$150,000 threshold that appears in 13 C.F.R § 125.6(a). This final rule became effective on September 30, 2016.

DEPARTMENT OF LABOR

Department of Labor Implementation of OMB Guidance on Non-procurement Debarment and Suspension

On April 29, 2016, the DOL's Office of the Assistant Secretary for Administration and Management ("OASAM") published, in the Federal Register, a direct final rule to implement OMB guidance on non-procurement debarment and suspension. The comment period for the direct final rule ended on May 31, 2016, with no comments received. For this reason, OASAM is confirming that the direct final rule became effective on May 31, 2016.

Establishing Paid Sick Leave for Federal Contractors

The DOL has issued a final rule which issues regulations to implement Executive Order 13706, establishing paid sick leave for federal contractors. Executive Order 13706 ("the Order") requires certain parties that contract with the federal government to provide their employees with up to 7 days (56 hours) of paid sick leave annually, including paid leave allowing for family care. The Order directed the Secretary of Labor to issue regulations to implement its requirements by September 30, 2016. This Final Rule defines terms used in the regulatory text, describes the categories of contracts and employees the Order covers and excludes from coverage, sets forth requirements and restrictions governing the accrual and use of paid sick leave, and prohibits interference with, or discrimination for, the exercise of rights under the Order. It also describes the obligations of contracting agencies, the DOL, and contractors under the Order, and it establishes the standards and procedures for complaints, investigations, remedies, and administrative enforcement proceedings related to alleged violations of the Order. As required by the Order, and to the extent practicable, the final rule incorporates existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act, the Service Contract Act, the Davis-Bacon Act, the Family and Medical Leave Act, the Violence Against Women Act, and Executive Order 13658, Establishing a Minimum Wage for Contractors, [81 Fed. Reg. 67598](#). This final rule will become effective on November 29, 2016.

OTHER GOVERNMENT CONTRACTING NEWS

"Acquisition Policy Changes Are Likely at VA in Fiscal 2017." *Federal Contracts Report*. Oct. 2016: 325-360.

In a September report, the GAO identified 10 recommendations to improve the VA's \$20 billion annual contract spending. Among the GAO's recommendations were for the VA to develop procedures for updating the procurement system, review strategic sourcing efforts and improve contract reviews. Contractors can also expect increased adoption of category management concepts including full-and-open competition in VA markets.

“Analysis: What the MGT Act Could Mean for Contractors.” *Federal Contracts Report*. Oct. 2016: 325-360.

On September 22, the House passed H.R. 6004, the Modernizing Government Technology Act, shifting the federal government’s focus on maintaining its aging IT infrastructure, which can pose security risks, to introducing cloud computing, implementing cybersecurity measures and prioritizing cost-savings programs. According to the Federal Contracts Report, while Hewlett Packard Enterprises is the largest legacy IT vendor for the government and a top cloud computing vendor, there maybe an opportunity for other major cloud computing and cybersecurity vendors to provide these services.