



Weekly Report for April 19, 2019

GOVERNMENT CONTRACTING

As reported by Bloomberg Government, the Department of Health and Human Services is [competing](#) for a follow-on contract worth as much as \$347 million to continue implementing the federal employee and contractor identification, authentication, and cybersecurity standards outlined in the Homeland Security Presidential Directive-12 (HSPD-12). The scope of the contract—called the HSPD-12 Identity, Credential, and Access Management (ICAM) Systems Integration Support (SiS)—falls into two domains. Both domains aim to ensure that employees and contractors have credentials for access to HHS facilities and systems, including a smart card management system, logical access management system, public key infrastructure services, and physical access systems. Domain 1 services are for support of the steady-state operations and maintenance (O&M) of the Identity, Credential, and (logical) Access Management (ICAM) systems and capabilities, as well as the development of new capabilities required to enhance solution components. Domain 2 is for ancillary strategic services related to enterprise ICAM capabilities aligned with the Federal Identity, Credential and Access Management (FICAM) Roadmap, HSPD-12 policy, standards, and guidelines. Domain 2 contractors will assist HHS in planning, prototyping and piloting IAM@HHS processes and components that utilize best practices for interoperability, achieve enterprise efficiencies and accommodate future changes in regulations, guidance, and business needs. Responses are due May 15, 2019.

According to Law360, the Environmental Protection Agency (EPA) is seeking proposals to clean up abandoned mines on or near Navajo land under a contract valued at about \$220 million, with the agency saying it is exclusively looking for bids from small businesses. The agency said that it expects to award multiple contracts for cleanup, response, and construction services to small businesses over a five-year period. Work will take place at former uranium mine sites in the Navajo and Grants, New Mexico, mining district areas. According to the agency, 30 million tons of ore were mined on and adjacent to Navajo Nation land between 1944 and 1986, resulting in 523 abandoned mines. In recent years, the agency has reached enforcement agreements and settlements totaling \$1.7 billion with mining companies, aimed at reducing the risk of radiation exposure to Navajo people. Thanks to these settlements, there is now funding available to clean up 219 of the 523 abandoned mines. The agency has identified 46 mines as cleanup priorities given their proximity to homes and the risk of potential water contamination they pose, according to its website.

According to Bloomberg Government, the Department of Education's Federal Student Aid (FSA) office is seeking small businesses to deliver Middleware architecture and services technology under a 10-year, \$100 million contract, per a final request for proposal released on April 15. Middleware—software that connects a computer's operating system and the applications running on it—allows for data management, cybersecurity services, and support

for communications and cloud computing. The FSA contract, known as Enterprise Middleware Architecture and Services (EMAS), will help FSA migrate applications to the cloud and provide program management, quality assurance, architecture management, release and deployment management, security, and ancillary support. Proposals are due May 14, and FSA plans to announce single or multiple contract awards in June. The contract is expected to start sometime between July and September.

The Department of Justice [reported](#) that Fortinet, Inc. has agreed to a settlement valued at \$545,000 to resolve allegations it violated the False Claims Act by falsely representing its products were in compliance with the Trade Agreements Act (TAA), 19 U.S.C. § 2501 et seq. The TAA generally prohibits certain government contractors from purchasing products that are not entirely from, or “substantially transformed” in, the United States or certain designated countries. Fortinet acknowledged that between January of 2009 and the fall of 2016, the responsible employee directed certain employees and contractors to change product labels so that no country of origin was listed, or to include the phrases “Designed in the United States and Canada,” or “Assembled in the United States.” Fortinet acknowledged that the responsible employee’s actions involved products sold to certain distributors that subsequently sold them to resellers, which in turn sold a portion of them to U.S. government end users. The responsible employee has since been terminated from employment with Fortinet.

LABOR AND EMPLOYMENT

According to Government Executive, the Department of Veterans Affairs (VA) Office of Inspector General (OIG) is [investigating](#) a new office that was designed to protect whistleblowers from reprisal but faces allegations of aiding retaliation against them. The VA/OIG is investigating allegations of senior VA employee misconduct and is looking into activities at the Office of Accountability and Whistleblower Protection (OAWP) as part of an ongoing review of the implementation of the 2017 law that created OAWP. President Trump created OAWP by executive order in 2017 and later codified it when he signed the 2017 VA Accountability and Whistleblower Protection Act into law. Per the article, the office was mostly celebrated, with advocates hopeful that the focus on the rights and protections for whistleblowers would reverse a culture infamous for intimidation and reprisal. However, Government Executive noted that that optimism has largely soured leading to hotline tips to the inspector general and bipartisan scrutiny from Congress. Some VA employees reportedly told Government Executive that they felt betrayed or neglected by an office they believed would help them.

The Department of Labor [reported](#) that Fine Tune Enterprises Inc.—a cleaning service company based in Orlando, Florida—paid \$123,650 in back wages and fringe benefits to 44 employees after a Wage and Hour Division (WHD) investigation found the employer violated labor requirements of the Davis Bacon and Related Acts (DBRA) and the Contract Work Hours and Safety Standards Act (CWHSSA). WHD determined that the employer paid its employees incorrect prevailing wage and benefit rates when it used the rates assigned to a janitor under the McNamara-O'Hara Service Contract Act, instead of general laborer rates applicable under DBRA and required for the work performed. Applying the wrong rates also led to the employer's failure to pay the required overtime rates, and to maintain accurate wage information on the employer's certified payrolls. The prime contractor, Hensel Phelps, subcontracted to Fine Tune Enterprises Inc. to perform cleanup work with NASA funds at the John F. Kennedy Space Center. WHD determined Hensel Phelps provided the incorrect wage determination to Fine Tune Enterprises in their contract, leading to the wage

discrepancies. To remedy the error, Hensel Phelps issued a check for the full amount of back wages and fringe benefits to the subcontractor for payment to the affected employees.

According to Law360, while the U.S. Supreme Court has kept employment-law watchers waiting on whether it will take up the question of whether bias against LGBT workers is covered under Title VII, trial courts have been left to tackle tricky questions involving the viability of sexual orientation and gender identity discrimination claims. Over the past few months, the high court has been considering whether to grant certiorari in a closely watched trio of cases — Altitude Express v. Zarda; Bostock v. Clayton County, Georgia; and R.G. & G.R. Harris Funeral Homes Inc. v. EEOC — that involve questions about the scope of Title VII of the Civil Rights Act. As people wait to see whether the Supreme Court will take the cases, cases are playing out at the trial court level amid shifting circuit precedents on the issue. One recent development in Title VII cases came out of the Third Circuit, where a Pennsylvania federal judge ruled in favor of a casino and held that individuals cannot pursue sexual orientation claims under Title VII.

PILIEROMAZZA BLOGS

An Agency's Corrective Action Decision Is Not Immune to Protest – What Does It Take to Win?

Michelle E. Litteken

Corrective action is a common outcome of a bid protest. Indeed, the U.S. Government Accountability Office (GAO) reported that 29% of the protests filed in FY 2018 resulted in corrective action. If you are a protester, that may be great news. In the case of a post-award protest, it likely means that you have another shot at award. However, if you are an intervenor, it means the agency chose not to defend your award, and you could lose the contract. What can an intervenor do?

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New IRS Requirements for EIN Applications Go Into Effect May 13, 2019

By Kathryn L. Hickey

As we have all been scrambling to get our taxes completed this month, a new IRS requirement may have been overlooked that goes into effect on May 13, 2019. This new requirement impacts the process by which any new entity (including sole proprietorships, partnerships, limited liability companies, trusts, and corporations) can apply for an Employer Identification Number (EIN), the 9-digit identification number assigned to entities for tax filing and reporting purposes. The new requirements will impact all of our clients engaged in forming new entities, in particular, clients who utilize holding company structures and those who participate in joint ventures.

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Thinking of Forming a Mentor-Protégé Joint Venture? Timing Matters

By Kathryn V. Flood

If you are thinking of forming a mentor-protégé joint venture to pursue a particular set-aside contract, it is critical that your timing has enough built-in cushion to ensure that all of the necessary approvals and entity-formation steps are accomplished before you submit your proposal. There is a fairly rigid sequencing of the steps involved in putting together the mentor-

protégé application and subsequent joint venture agreement—make sure you do not fall into the trap of skipping a step, or otherwise you may put your proposal at risk.

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Could You Be the Target of a Government Claim?

By Michelle E. Litteken

Most contractors know that they may submit a claim under the Contract Disputes Act (CDA) if a problem arises during performance. However, many contractors are not aware that the government also has the ability to bring a claim. Likewise, contractors may not understand the options for responding to a government claim. Given the potential gravity of a government claim, these are issues contractors should be aware of.

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EEOC Announces New EEO-1 Pay Data Reporting Deadline

By Sarah L. Nash

September 30, 2019, marks the newly announced deadline for employers who submit annual EEO-1 reports to report employee 2018 pay data to the Equal Employment Opportunity Commission (EEOC). The EEOC revealed the new deadline in a federal court submission last week. The judge in the case will still need to approve of the EEOC's plan before it becomes the official cutoff date.

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The Relationship Between Privacy and Trust

By David T. Shafer

Recently, there has been an advertisement running during March Madness from Apple that is all about privacy. If your household has been watching as much college basketball as mine has, then you've likely seen it. It's a minute full of real-world examples of how people value their personal privacy. None of those examples are particularly significant but, in the aggregate, it shows that this remains an issue that people are deeply concerned about. That concern, of course, is then applied to technology. In the ad, it is an iPhone. In your business, it is your e-mail server, your website, your social media presence and the computer and phones your business uses to conduct its business.

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When Cybersecurity Is a Hot Topic, GSA Expands Its Cybersecurity Service Offerings

By Emily J. Rouleau

The General Services Administration (GSA) recently expanded its cybersecurity service offerings for federal, state, and local governments. Specifically, GSA worked in collaboration with the Department of Homeland Security and the Office of Management and Budget to develop IT Schedule 70's Highly Adaptive Cybersecurity Services (HACS) Special Item Number (SIN) 132-45 to make it easier for agencies to procure quality cybersecurity services.

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