



Weekly Report for February 8, 2019

### **GOVERNMENT CONTRACTING**

The Small Business Administration (SBA) [announced](#) a series of workshops geared to help Native American small business communities with technical assistance and business development. The SBA will participate in the workshops by providing information and access to products and services that are available. The workshops will focus on increased financial literacy and outreach initiatives to enhance the use of the SBA's financing programs, counseling, and business development services. The SBA and other federal agencies, such as the U.S. Department of Agriculture, stand ready to provide long-term business development and job creation strategies throughout Native American communities.

President Trump issued an Executive Order to strengthen “Buy-American” principles in federal financial assistance programs. The Order requires the heads of executive departments and agencies to encourage federal assistance recipients to use, to the greatest extent practicable, iron, aluminum, steel, cement, and other manufactured products produced in the U.S. in every contract, subcontract, purchase order, or sub-award that is chargeable against such federal financial assistance award. It further requires agency and department heads to report on any tools, techniques, terms, or conditions that could maximize use of U.S.-produced iron, aluminum, steel, cement, and other manufactured products in contracts, subcontracts, purchase orders, and sub-awards. [84 Fed. Reg. 24, 2039.](#)

The Veterans Benefits Administration (VBA) is moving to a paperless claims processing environment from a patchwork system that combines paper records, electronic fax, microfilm, microfiche, files stored on compact discs, DVDs, and flash memory devices. According to Bloomberg Government, the VBA issued a request for information to find companies interested in supporting the transition. The draft performance work statement indicates that VBA may contract with multiple companies and that the scope of work may be extensive. The agency wants contractors capable of applying machine learning and artificial intelligence to the problem, as well as identifying performance deficiencies, establishing performance metrics, and providing organizational training and leadership.

Representative Donald Norcross (D-NJ) introduced a bipartisan bill, Fairness for Federal Contractors Act ([H.R. 824](#)), which would provide back pay for more than a million federal contractors furloughed or on the job without pay during the 35-day government shutdown. The legislation was co-sponsored by 19 House Democrats and 3 Republicans.

**According to Law360, the U.S. Army Corps of Engineers (USACE) is launching a pilot program aimed at determining how well different project delivery methods can reduce the amount of money and time spent on government projects.** Interested parties can send the USACE information about possible public-private partnership projects on or before April 2, and the USACE's civil works department will choose up to 10 projects based on specific criteria, including a requirement that construction costs be higher than \$50 million. The program is part of the Revolutionize USACE Civil Works initiative, which seeks to get civil works projects done faster, implement different types of financing strategies, and streamline the permitting and review process.

**The Department of Justice (DOJ) [reported](#) that a former active-duty U.S. Army colonel and his wife have been sentenced to federal prison and fined more than \$200,000 for their roles in steering government contracts to co-conspirators in return for cash.** Anthony Roper pled guilty to procurement integrity fraud and was sentenced to 60 months in prison and fined \$200,000. Mr. Roper's wife, Audra Roper, pled guilty to accessory after the fact and was sentenced to 28 days in prison, fined \$10,000, and placed on five years of probation. According to evidence presented during guilty pleas and sentencing hearings, Mr. Roper, then in active-duty status at Fort Gordon, accepted bribes from Calvin Devear Lawyer, a retired U.S. Army colonel, to steer Army contracts worth more than \$20 million to Mr. Lawyer's company, the CREC group. Based on false representations, the CREC group had been awarded status as a small, disadvantaged business, and the company used that status to gain a competitive advantage in contracting.

**The DOJ [announced](#) that VMJ Construction, LLC ("VMJ"); its owner, Michael T. Vigil; Vigil Contracting, Inc. ("Vigil Contracting"); and Vigil Contracting's Operations Manager, John J. Vigil, have agreed to pay the United States \$3.6 million to resolve allegations that they defrauded the Small Business Administration ("SBA") 8(a) Business Development Program.** The United States contends that VMJ made false statements to the SBA regarding its eligibility to participate in the 8(a) Program. Specifically, VMJ relied almost exclusively upon Vigil Contracting to bid on and complete the work awarded to VMJ under the 8(a) Program. VMJ used Vigil Contracting's bonding, office space, employees, contractors, software, computers, and vehicles. Vigil Contracting employees and contractors, including John J. Vigil, made the high-level business decisions of VMJ and managed the day-to-day operations of VMJ. Michael T. Vigil did not control VMJ, did not set the long-term policy, nor manage the day-to-day management of the business. By misrepresenting these facts, the United States Army, the United States Navy, and the United States Department of Agriculture awarded VMJ several federal government contracts set aside for 8(a) Program participants.

## **LABOR AND EMPLOYMENT**

**The U.S. Court of Appeals for the Fifth Circuit [held](#) that Title VII of the Civil Rights Act of 1964 does not apply to transgender workers.** The Fifth Circuit applied a 40-year old precedent that stated federal civil rights law does not apply to gay workers. According to Bloomberg Government, the question of whether Title VII covers LGBT workers and job applicants continues to percolate in the courts, and the U.S. Supreme Court has three petitions asking it to settle the issue. The Supreme Court justices are expected to decide whether to grant the petitions on February 15.

The Department of Labor [announced](#) the launch of an enhanced electronic version of the “Reference Guide to the Fair Labor Standards Act” (FLSA). This new [online version](#) of one of the Wage and Hour Division’s (WHD) most popular publications aims to assist American employers and workers with a simple, easy-to-follow resource that provides basic WHD information, as well as links to other resources. WHD established this electronic guide as part of its ongoing efforts to modernize compliance assistance materials for employers and workers, and to provide easily accessible, plain-language information that will guide them to compliance.

**According to Law360, the Equal Employment Opportunity Commission (EEOC) said that it is giving employers two more months to file their EEO-1 workforce data surveys after the agency shut down due to the federal government appropriations lapse.** The EEOC said employers will need to file their forms covering the year 2018 by May 31, rather than the usual March 31 due date. The agency [requires](#) private employers with 100 or more workers and federal contractors or first-tier subcontractors to file EEO-1 forms breaking down the employers’ workforces by race, ethnicity, gender, and job title. That data is [used](#) “to support civil rights enforcement and to analyze employment patterns, such as the representation of women and minorities within companies, industries or regions.”

## **PILIEROMAZZA BLOGS**

### **Subcontract Language Controls, Even When It May Not Be Fair**

By Matthew E. Feinberg

The language you choose to put in your subcontract matters, even if you do not understand it or applying that language might end in an unfair result. The Ninth Circuit Court of Appeals drove this point home recently in *Aspic Engineering and Construction Company v. ECC Centcom Constructors, LLC*.

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### **Using a Joint Venture for Supply Procurements**

By Jon Williams

Joint ventures have been popular arrangements for chasing government contracts, particularly since the start of SBA’s All Small Mentor-Protégé program in 2016. The “ASMPP” allows any small business to enter into an SBA-approved mentor-protégé relationship with a large business. Once a mentor-protégé relationship is approved, the small business and large business can form a joint venture to pursue small business set-asides. This marriage of a small and large business to pursue small business contracts can provide a real competitive edge in competitions for set-aside work, which is a big reason we continue to see a lot of activity with joint ventures and mentor-protégé relationships more than two years after the ASMPP opened its doors.

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