



## Weekly Report for December 16, 2016

### **GOVERNMENT CONTRACTS**

#### **Federal Acquisition Regulation - Paid Sick Leave for Federal Contractors**

The Department of Defense (“DOD”), General Services Administration (“GSA”), and National Aeronautics and Space Administration (“NASA”) have issued an interim rule revising the Federal Acquisition Regulation (“FAR”) to implement Executive Order 13706 (the “E.O.”), Establishing Paid Sick Leave for Federal Contractors. The E.O. seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by ensuring that employees on those contracts can earn up to 7 days or more of paid sick leave annually, including paid sick leave for family care. The E.O. directed the Department of Labor (“DOL”) to issue regulations by September 30, 2016, and for the FAR Council to issue regulations within 60 days of the DOL regulations. The Wage and Hour Division of DOL published a final rule in the Federal Register ([81 Fed. Reg. 67598](#)), on September 30, 2016, also entitled “Establishing Paid Sick Leave for Federal Contractors,” which added a new part 13 to title 29 Code of Federal Regulation.

This interim rule applies to solicitations issued on, or after, January 1, 2017, and resultant contracts. Applicability of the clause at §52.222-62, Paid Sick Leave Under the E.O., to existing contracts is as follows: (1) Contracting officers shall include the clause in bilateral modifications extending the contract when such modifications are individually or cumulatively longer than six months; and (2) in accordance with FAR § 1.108(d)(3), contracting officers are strongly encouraged to include the clause in existing indefinite-delivery indefinite-quantity contracts, if the remaining ordering period extends at least six months and the amount of remaining work or number of orders expected is substantial, [81 Fed. Reg. 91627](#). This interim rule is effective January 1, 2017 and comments are due on, or before, February 14, 2017.

#### **Federal Acquisition Regulation - Fair Pay and Safe Workplaces; Injunction**

A final rule was published in the Federal Register on August 25, 2016, amending the FAR to implement the E.O. on Fair Pay and Safe Workplaces. Implementation of portions of the E.O. was preliminarily enjoined by an order issued by a Federal District Court on October 24, 2016. On October 25, 2016, the FAR Council (the “Council”) issued a memorandum to the Chief Acquisition Officers, Senior Procurement Executives, Defense Acquisition Regulations Council, and Civilian Agency Acquisition

Council directing that all steps necessary be taken to ensure the enjoined sections, provisions, and clauses of the final rule are not implemented until such time as the injunction is terminated. The effective date of this final rule is December 16, 2016 and the date of applicability is October 24, 2016.

### **Federal Acquisition Regulation – Introduction of Federal Acquisition Circular 2005-93**

Federal Acquisition Circular (“FAC”) 2005-93 and its companion document, the Small Entity Compliance Guide (“SECG”), summarizes the FAR rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council, [81 Fed. Reg. 91626](#).

### **LEGAL SERVICES CORPORATION**

#### **Procedures for Disclosure of Information Under the Freedom of Information Act**

The Legal Services Corporation (“LSC”) is revising its regulation on procedures for disclosure of information under the Freedom of Information Act (“FOIA”) to implement the statutorily required amendments in the FOIA Improvement Act of 2016. LSC is also making technical changes to improve the structure and clarity of its FOIA regulations, [81 Fed. Reg. 91037](#). The final rule is effective as of December 16, 2016.

### **SMALL BUSINESS ADMINISTRATION**

#### **Small Business Investment Companies--Administrative Fees**

The Small Business Administration (“SBA”) is proposing to increase the Small Business Investment Company (“SBIC”) licensing and examination fees. The Small Business Investment Act of 1958, as amended, allows SBA to collect licensing and examination fees to offset SBA’s costs associated with the administration of these two activities. Current fees offset less than 40% of SBA’s administrative expenses related to these activities. This proposed rule would revise existing regulations to increase, over a five-year period, SBIC licensing and examination fees in order to annually recoup an estimated 70% of SBA administrative expenses related to these activities. After the five year period, the rule proposes annual increases of these fees based on inflation. To encourage investment into underserved areas, the proposed rule would establish certain examination fee discounts for SBICs that make significant low and moderate income investments, [81 Fed. Reg. 91050](#). Comments on the proposed rule are due on, or before, February 14, 2017.

### **OTHER GOVERNMENT CONTRACTING NEWS**

**“2016 Saw Large Uptick in Bid Protests Sustained by GAO.”** *Federal News Radio*, December 14, 2016. Retrieved from <http://federalnewsradio.com>.

The GAO issued a report showing that in 2016, the GAO sided against federal agencies’ initial awarding of contracts and task orders in nearly 23% of the cases it decided. This was the highest rate of sustained protests since 2007 and up 11% from last year. The report indicated that the most common reasons for ruling in protestors’

favor were due to agencies reaching unreasonable conclusions about bidders' technical capabilities, past performance or cost and price, or 'flawed' selection criteria. The annual report to Congress also notes that federal agencies complied with all the recommendations GAO made in connection with bid protests during 2016, the first time that has happened in the last five years.

**“Federal Contracting Experts Offer Advice, Encouragement to Women Small Business Owners.”** *Federal News Radio*, December 14, 2016. Retrieved from <http://federalnewsradio.com>.

At the ChallengeHER event held on December 14 by the SBA, small business advisers from the GSA, DOD and the SBA addressed women small business owners on best practices for securing federal government contracts. Earlier this year SBA released its annual report card on small business federal contracting and for the first time, the federal government reached its 5% women-owned small business (“WOSB”) contracting goal since the bar was set in 1996, spending \$17.8 billion working with WOSBs.

**“New DIA Acquisition Process Invites Tech Firms to Show Their Stuff to Senior Leaders.”** *Federal News Radio*, December 14, 2016. Retrieved from <http://federalnewsradio.com>.

Over the past three years, the Defense Intelligence Agency (“DIA”) has been experimenting with a rapid technology acquisition project called “Needipedia” in which it publishes technology gaps it wants to fill, lets industry respond with short white papers, and then buys new capabilities in as little as a month. Now, companies will also get a chance to show off their products directly to DIA’s senior leadership in 30-minute online presentations. Robert Dixon, DIA’s special adviser for innovation, said it is the first of many such industry events the agency plans to host on a quarterly basis. So far this year, DIA has entered into contracts for pilot demonstrations to solve 18 separate technology gaps it advertised via the classified and unclassified version of its Needipedia web portals.

**“Inspector General Empowerment Act Clears Congress.”** *Government Executive*, December 12, 2016. Retrieved from <http://www.govexec.com>.

The Senate unanimously approved a House-passed bill to enhance the abilities of inspectors general to commandeer agency documents previously held due to privacy or other concerns. The Inspector General Empowerment Act (H.R. 6450), sponsored by Rep. Jason Chaffetz (R-UT), confirms that IGs “are entitled to full and prompt access to agency records, thereby eliminating any doubt whether agencies and whistleblowers are legally authorized to disclose potentially sensitive information to IGs” as noted in a statement from the Council of Inspectors General on Integrity and Efficiency. The bill can be found [here](#).

**“The Unintended Consequences of Category Management’s Best-in-Class Approach?”** *Federal News Radio*, December 9, 2016. Retrieved from <http://federalnewsradio.com>.

This blog article explores some of the legal, policy and operational questions surrounding the best-in-class designation (BIC) contract solutions for mandatory use in

the recent draft circular issued by the Office of Federal Procurement Policy regarding the implementation of Category Management. The draft circular can be found [here](#).

**“NASA Proposes New Rule to Reward Good Contractors.”** *Federal News Radio*, December 9, 2016. Retrieved from <http://federalnewsradio.com>.

NASA has proposed a rule in which it will want to give “award terms” or additional contract periods of performance to contractors whose sustained performance is deemed excellent. NASA said this will provide a non-monetary incentive for contractors to perform well, and create more stable business relationships for contractors and their employees.

**“House Clears Two Whistleblower Protection Bills to Send to Obama.”**

*Government Executive*, December 9, 2016. Retrieved from <http://www.govexec.com>.

On December 5, the House cleared a Senate-passed bill to extend and make permanent current whistleblower protections to nearly all federal government grantees, subgrantees, contractors and subcontractors. Under current law, whistleblower protections apply only to contractors, grant recipients, and subcontractors, but not to employees of subgrantees. The bill was sponsored by Senator Claire McCaskill (D-Mo.) who is the top Democrat on the Homeland Security and Governmental Affairs Committee. The bill can be found [here](#).