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Legislation

SENATE PASSES BILL TO STRENGTHEN WHISTLEBLOWER PROTECTIONS FOR FEDERAL EMPLOYEES

On May 8, 2012, the Senate passed the Whistleblower Protection Enhancement Act of 2012 (“Act”) which, if enacted, would enhance whistleblower protections for employees throughout the federal government. The bill would extend and clarify the types of protected disclosures and the class of protected employees. It also would suspend, in most circumstances, the exclusive jurisdiction of the Federal Circuit over federal employee whistleblower cases and would allow for jury trials under certain circumstances for five years, beginning on the effective date of the Act. In addition, the bill would enhance the rights of the Office of Special Counsel and would create an ombudsman for whistleblower protection to teach agency personnel about their whistleblower rights. The bill is a companion bill to H.R. 3289 (11/1/2011). (S. 743)

HOUSE PASSES BILL TO DECREASE THE FEDERAL DEFICIT

On May 10, 2012, the House passed the Sequester Replacement Reconciliation Act of 2012. If enacted, the bill would partially override and replace planned spending cuts, which are scheduled to start in 2013. The bill would reduce the deficit by approximately \$315 billion in the next decade. Proponents of the bill say that the measure would wipe out anticipated defense cuts that could stymie the military. Opponents say that the spending cuts are largely in entitlement programs intended to help the poor. (H.R. 5652)

HOUSE PASSES MILITARY SPENDING BILL FOR FISCAL YEAR 2013

On May 18, 2012, the House passed the National Defense Authorization Act for Fiscal Year 2013 (“NDAA”), the 2013 defense spending bill. If enacted, the bill would appropriate approximately \$554 billion for national defense activities and \$88 billion for contingency operations overseas. In addition to the appropriation of funds, among other things, the bill contains provisions that would support and advance small business contracting. The bill also contains provisions that would limit DoD’s ability to procure alternative fuels and would withhold funds to certain defense offices until they submit service contract inventories. On May 24, 2012, the Senate Armed Services Committee completed a markup of and approved its version of the NDAA. (H.R. 4310)

SENATE INTRODUCES BILL TO ASSIST SURVIVING SPOUSES OF DECEASED VETERANS BY CONTINUING SMALL BUSINESS DESIGNATION

On May 21, 2012, Sen. Richard Burr (R-NC) and Sen. Scott Brown (R-MA) introduced the Veterans’ Small Business Opportunity Act of 2012 which would amend the laws covering veterans’ benefits. Under current law, if a veteran small business owner dies, the Department of Veteran Affairs will transfer the designation of a service-disabled veteran owned small business (“SDVOSB”) to the surviving spouse only if the veteran’s death can be attributed to a service-connected disability. If the death was unrelated to the veteran’s service, the spouse loses all benefits. If passed, the bill would amend this law and establish a three-year transition period whereby a surviving spouse would continue receiving the SDVOSB designation if the deceased

did not die from a service-connected disability. The bill was referred to the Committee on Veterans' Affairs. (S. 3210)

SENATE INTRODUCES BILL AUTHORIZING PRESIDENT TO DETERMINE EXPORT CONTROLS OF SATELLITES AND RELATED ITEMS

On May 21, 2012, Sen. Michael F. Bennet (D-CO) introduced the Safeguarding United States Satellite Leadership and Security Act of 2012. If passed, the bill would give the President discretion to transfer certain satellites and related items from the U.S. Munitions List to the Commerce Control List. In other words, the satellites and their corresponding items could be transferred from the purview of the International Traffic in Arms Regulations to the Export Administration Regulations. Additionally, the bill would prohibit the direct and indirect transfer of satellites and related items to the Government of the People's Republic of China and to "North Korea, Cuba, Iran, Sudan, Syria, or any country that is designated by the Secretary of State as supporting international terrorism." The bill was referred to the Committee on Foreign Relations. (S. 3211)

SENATE INTRODUCES BILL TO RAISE SMALL BUSINESS PRIME CONTRACTING AND SUBCONTRACTING GOALS

On May 22, 2012, Sen. Ben Cardin (D-MD) and Sen. Mary Landrieu (D-LA) introduced the Small Business Goaling Act of 2012. This is a companion bill to H.R. 3850 (1/31/12). If passed, the bill would increase the government-wide small business contracting goals to 25 percent for prime contracts and 40 percent for subcontracts. The bill also would require the head of each federal agency to establish small business contracting goals for the agency he or she oversees and report on such goals. The bill was referred to the Committee on Small Business and Entrepreneurship. (S. 3213)

SENATE INTRODUCES BILL TO FACILITATE SMALL BUSINESS EXPORTING

On May 22, 2012, Sen. Jeanne Shaheen (D-NH) and Sen. Kelly Ayotte (R-NH) introduced the Small Business Export Growth Act of 2012. The bill's purpose, among other things, is to "improve the coordination of export promotion programs and to facilitate export opportunities for small businesses." If passed, the bill would require increased outreach to small businesses on matters relating to exporting including: yearly export outreach events in each state; a small business export matchmaking pilot program; improvement of export resources; and a Small Business Inter-Agency Task Force on Export Financing. The bill was referred to the Committee on Banking, Housing, and Urban Affairs. (S. 3218)

SENATE INTRODUCES BILL TO REQUIRE THE PRESIDENT TO REPORT ON AUTOMATIC SPENDING CUTS

On May 23, 2012, Sen. John Thune (R-SD) along with thirty-one other co-sponsors introduced the Sequestration Transparency Act of 2012. This is an identical bill to H.R. 5872. If passed, the bill would require the President, on July 9, 2012, to submit a report to Congress detailing the sequestration (or automatic spending cuts) for the 2013 fiscal year and how he plans to implement such cuts. The bill was referred to the Committee on the Budget. (S. 3228)

HOUSE INTRODUCES BILL TO DEEM CERTAIN CONTRACTS SMALL BUSINESS CONTRACTS

On May 18, 2012, Rep. Cynthia Lummis (R-WY) and Rep. Niki Tsongas (D-MA) introduced the Small Business Fairness Act of 2012. This is a companion bill to S. 1110 (5/26/2011). If passed, the bill would allow the agency to count as a contract awarded to a “covered” small business for purposes of meeting its small business goals if a small business concern performs the obligations of the teaming arrangement entity under a contract between the teaming arrangement entity and the agency. The bill was referred to the Committee on Small Business. (H.R. 5829)

Regulations

DOD, GSA, AND NASA ISSUE FINAL RULE AMENDING FAR TO RAISE COST ACCOUNTING STANDARDS THRESHOLD

On May 10, 2012, DoD, GSA, and NASA issued a final rule amending the FAR to increase the cost accounting standards (“CAS”) threshold from \$650,000 to \$700,000. The final rule became effective on May 10, 2012. (77 Fed. Reg. 27550, 5/10/2012)

DOD ISSUES FINAL RULE AMENDING DFARS TO IMPROVE CONTINGENCY CONTRACT CLOSEOUTS

On May 22, 2012, DoD issued a final rule to amend the DFARS “to require additional planning, monitoring, and executing activities for contract closeouts when the contracts are awarded for performance in contingency areas.” The rule implements recommendations made by the Government Accountability Office and requires heads of contracting activities to prioritize the closeout of contingency contracts. The rule also requires heads of contracting activities to monitor and assess the progress of closeouts in contingency areas and to take steps to reduce any backlogs. The rule became effective on May 22, 2012. (77 Fed. Reg. 30366, 5/22/2012)

DOD ISSUES FINAL RULE AMENDING DFARS TO ESTABLISH ORDER FOR APPLYING CONTRACT MODIFICATIONS

On May 22, 2012, DoD issued a final rule amending the DFARS to establish a sequence for applying modifications to a contract or order. According to the rule, modifications are first applied in order of their effective dates. If multiple modifications have the same effective date, they are applied in order of their signature dates. If multiple modifications have the same effective and signature dates, then “procuring contracting office modifications will be applied in numeric order, followed by contract administration office modifications in numeric order.” The rule became effective on May 22, 2012. (77 Fed. Reg. 30367, 5/22/2012)

DOD, GSA, AND NASA ISSUE INTERIM RULE AMENDING FAR TO PROHIBIT CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS

On May 10, 2012, DoD, GSA, and NASA issued an interim rule amending the FAR to prohibit agencies from awarding contracts to inverted domestic corporations using 2012

appropriated funds. Inverted domestic corporations are corporations that were previously incorporated in the U.S., but they or their parent companies are now incorporated in a foreign country. The interim rule implements section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74), only applies to 2012 appropriated funds, and extends an existing prohibition that applied to funds appropriated for Fiscal Years 2008 through 2010. The rule became effective May 10, 2012, but interested parties may submit written comments on or before July 9, 2012. (77 Fed. Reg. 27547, 5/10/2012)

DOD ISSUES INTERIM FINAL RULE ESTABLISHING VOLUNTARY CYBERSECURITY INFORMATION EXCHANGE PROGRAM

On May 11, 2012, DoD issued an interim final rule creating a voluntary cybersecurity information sharing program between DoD and certain eligible defense industrial base (“DIB”) companies. The purpose of the program is to enhance the DIB companies’ capabilities to protect DoD information residing on their information systems. Under the program, DoD will provide the participating DIB companies with cyber threat data and information assurance best practices. In exchange, the DIB companies will report certain cyber intrusions to DoD. The rule became effective May 11, 2012. Interested parties may submit comments, but all comments must be received by July 10, 2012. (77 Fed. Reg. 27615, 5/11/12)

DOD ISSUES INTERIM RULE AMENDING DFARS TO STREAMLINE EXPORT CONTROLS REGULATIONS

On May 22, 2012, DoD issued an interim rule to amend the DFARS to restructure and simplify regulations on export control between the United States and the United Kingdom under certain circumstances. The rule implements: (1) the Security Cooperation Act of 2010 (Pub. L. 111-266); and (2) the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (“Treaty”). The Treaty creates an “Approved Community” and then allows for the export of certain defense articles, data, and services from the U.S. to the U.K. without government approval and licenses when specified requirements are met and when the items remain within the Approved Community. The interim rule became effective May 22, 2012, but interested parties may submit written comments on or before July 23, 2012. (77 Fed. Reg. 30361, 5/22/2012)

DOD ISSUES INTERIM RULE AMENDING DFARS TO IMPLEMENT UNITED STATES-KOREA FREE TRADE AGREEMENT

On May 22, 2012, DoD issued an interim rule to amend the DFARS to implement the United States-Korea Free Trade Agreement. The rule lowers the threshold for waiver of the Buy American Act for certain supplies and construction materials from the Republic of Korea and for the applicability of certain procurement procedures. Prior to this interim rule, the threshold was \$202,000. The interim rule reduces the threshold to \$100,000. The interim rule became effective May 22, 2012, but interested parties may submit written comments on or before July 23, 2012. (77 Fed. Reg. 30356, 5/22/2012)

USDA ISSUES PROPOSED RULE AMENDING GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

On May 1, 2012, the U.S. Department of Agriculture (“USDA”) issued a proposed rule that would amend 7 C.F.R. part 3201, Guidelines for Designating Biobased Products for Federal Procurement (“Guidelines”), which dictates the preferred federal procurement of biobased products. The rule would amend the Guidelines to incorporate statutory changes made by the Food, Conservation, and Energy Act of 2008. The rule would include, among other things, the designation of intermediate ingredients or feedstock, the designation of complex assembly products, and the revision of definitions and terminology. Comments on the proposed rule are due before July 2, 2012. (77 Fed. Reg. 25632, 5/1/2012)

DOD, GSA, AND NASA ISSUE PROPOSED RULE AMENDING FAR TO REQUIRE SERVICE CONTRACTORS TO OFFER EMPLOYMENT TO PREDECESSORS’ EMPLOYEES

On May 3, 2012, DoD, GSA, and NASA issued a proposed rule that would amend the FAR and implement Executive Order 13495, Nondisplacement of Qualified Workers Under Service Contracts, requiring service contractors and subcontractors to offer jobs to their predecessors’ workers. The rule would add a new FAR subpart and a new contract clause providing that when a service contract ends and a subsequent contract is awarded for the same or similar services at the same location, the new contractor must offer the employees of the old contractor a right of first refusal of employment. The rule also would contain several exemptions, a procedure under which a contracting officer could obtain a waiver, and notification requirements. Comments are due on or before July 2, 2012. (77 Fed. Reg. 26232, 5/3/2012)

SBA ISSUES PROPOSED RULE AMENDING ITS REGULATIONS ON SMALL BUSINESS RESEARCH ENTITIES

On May 15, 2012, SBA issued a proposed rule to amend its size and eligibility regulations applicable to the Small Business Innovation Research (“SBIR”) program and the Small Business Technology Transfer (“STTR”) program. The rule would update ownership, control, and affiliation requirements affecting businesses that are partially owned by venture capital companies, private equity firms, and hedge funds and that wish to participate in the SBIR and STTR programs. The rule would implement provisions of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81). Comments on the proposed rule must be submitted on or before July 16, 2012. (77 Fed. Reg. 28520, 5/15/2012)

DOD, GSA, AND NASA ISSUE PROPOSED RULE AMENDING FAR TO REMOVE AND REPLACE CERTAIN REFERENCES TO ACCOUNTING STANDARD

On May 17, 2012, DoD, GSA, and NASA issued a proposed rule to amend the FAR to remove specific postretirement benefit (“PRB”) references which are currently obsolete. The rule would replace the references with new criteria for determining whether the transition obligation is allowable when a contractor transitions from the pay-as-you-go accounting method

to an accrual accounting method for PRBs. Written comments on the proposed rule should be submitted on or before July 16, 2012. (77 Fed. Reg. 29305, 5/17/2012)

**SBA ISSUES NOTICE OF PROPOSED RULEMAKING TO INCREASE
PROCUREMENT OPPORTUNITIES OF SMALL BUSINESSES AND TO LESSEN
IMPACT OF CONTRACT BUNDLING AND CONSOLIDATION**

On May 16, 2012, SBA issued a notice of proposed rulemaking to amend its regulations to make it easier for small businesses to participate in multiple-award contracts and to reduce the negative effects of contract bundling and consolidation. The proposed rule would implement sections 1311, 1313, and 1331 of the Small Business Jobs Act of 2010 (Pub. L. 111-240) and is designed to give small businesses increased access to procurement opportunities. Comments must be submitted on or before July 16, 2012. (77 Fed. Reg. 29130, 5/16/2012)