

PilierioMazza Weekly Update for Government Contractors and Commercial Businesses

November 6, 2019

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LABOR & EMPLOYMENT LAW

Bloomberg Quotes PM Partner Nichole Atallah: Trump Rescinds Obama Order Prioritizing Federal Contract Workers, November 4, 2019

On October 31, 2019, President Donald Trump [rescinded](#) an executive order issued by former President Barack Obama that put existing federal contract workers at the front of the line for jobs on the next contract. [Executive Order 13495](#) . . . required qualified workers on a federal service contract who would otherwise lose their jobs as a result of the completion or expiration of a contract be given the right of first refusal for employment with the successor contractor. [\[Read More\]](#)

OFCCP Has Record-Setting Fiscal Year

DoL announced that the Office of Federal Contract Compliance Programs (OFCCP) had a record-setting 2019 fiscal year by having its most successful year in both enforcement and compliance assistance. OFCCP obtained a record \$40,569,816 in monetary settlements for affected class members during fiscal year 2019, \$16 million more than the next highest year (2017). OFCCP also implemented the Early Resolution Procedures program in fiscal year 2019, which led to a number of corporate-wide settlements early in the review process. The Early Resolution Procedures program also ensures that participating contractors will provide corporate-wide reports to OFCCP for five years following the settlement to ensure full compliance with equal employment opportunity and non-discrimination obligations. Read more [here](#).

Related Labor & Employment Law Presentations by PilieroMazza

WEBINAR: Labor and Employment for Government Contractors—Yes, There Is a Difference! November 12, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

WEBINAR: Key Labor & Employment Rules for Government Contractors, December 4, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

WEBINAR: Resolving Onboarding Mistakes That Cause Legal Problems on Federal Contracts, December 11, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

GOVERNMENT CONTRACTS LAW

SAVE THE DATE: PM Breakfast Seminar—SBA Proposes Rule Changes to 8(a) and Mentor-Protégé Programs, November 18, 2019

SBA will shortly issue a proposed rule offering important changes to its mentor-protégé program, the 8(a) program, and the rules governing size, status, and recertification. PilieroMazza wants to be proactive on this proposed rule and to disseminate details to the government contracting community as quickly as possible, as it

is likely that comments will be requested within 60 days of publication. Therefore, we are pleased to invite you to attend our seminar featuring speakers [Pamela Mazza](#), Managing Partner of PilieroMazza, and [John Klein](#), Associate General Counsel for Procurement Law at the U. S. Small Business Administration (SBA). The event will be on November 18, 2019, at The Ritz-Carlton, Tysons Corner, 1700 Tysons Boulevard, McLean, Virginia, from 7:30 AM to 10:30 AM. Stay tuned for registration details or contact marketing@pilieromazza.com to reserve your seat.

Please join John Klein and our team for this unique opportunity to dialog directly with one of the key drafters of the proposed rule.

Bloomberg Law: PM Counsel Michelle Litteken Comments on Agencies Stopping Performance of Protested Government Contracts, November 4, 2019

The Competition in Contracting Act requires agencies to stay performance of contracts protested at GAO. But agencies may authorize performance anyway by issuing an override after a written finding that immediate performance either serves the best interests of the U.S., or if urgent and compelling circumstances require it. Judges at the Court of Federal Claims have taken varying approaches when reviewing an override decision, and the Court of Appeals for the Federal Circuit has not articulated a specific standard of review. [\[Read More\]](#)

Microsoft Upsets Amazon in Winner-Take-All Award of Defense Department's JEDI Contract, October 28, 2019, [Lauren Brier](#)

On October 25, 2019, the Department of Defense (DoD) issued an award of its \$10 billion Joint Enterprise Defense Infrastructure (JEDI) cloud computing contract to Microsoft, beating out Amazon Web Services (AWS), the long-time favorite to receive the award. DoD's decision has come as a shock to most federal procurement experts and cloud service providers, as many believed JEDI was tailor-made for AWS based on the contract's advanced technical standards, as well as its stringent security certification requirements. ***The contract's rigorous security criteria, an ongoing issue of contention between government contractors bidding on the contract, ultimately removed many offerors early on from the competition (including Oracle), which left Microsoft and Amazon in a winner-take-all battle to control the Pentagon's cloud computing for years to come.*** For more on the JEDI contract, please also see Lauren Brier's recent [interview](#) on *Government Matters*. [\[Read More\]](#)

"Skinny" NDAA Released

Bloomberg Government reported that U.S. Sen. Jim Inhofe (R-Okla.), chairman of the Senate Armed Services Committee, introduced the "skinny" National Defense Authorization Act of fiscal year 2020 (NDAA). The "skinny" NDAA omits nearly all of the policy provisions, reporting requirements, and other language typically associated with the annual measure. The measure "supports a total of \$738 billion in fiscal year 2020 funding for national defense," according to a [news release](#) from Inhofe, though the legislative text he introduced omits tables that would specify authorizations for defense agencies, weapon systems, and programs. That proposed top-line authorization would comply with the fiscal year 2020 cap on defense spending under Public Law 116-37, as well as the adjustment for overseas contingency operations funding. Inhofe introduced the "Essential National Security Authorities Act for Fiscal Year 2020" as a last resort, as negotiations between the House and Senate on a full NDAA measure (S. 1790) have stalled amid disagreements over the president's border wall and related transfer authority. Read the "skinny" NDAA [here](#).

Contract Oversight Management Issues at FDIC

The Federal Deposit Insurance Corporation (FDIC) Office of Inspector General (OIG) released an evaluation report examining FDIC's contract oversight management, including its oversight and monitoring of contracts using its contracting management information system, the capacity of Oversight Managers (OM) to oversee assigned contracts, OM training and certifications, and security risks posed by contractors and their personnel.

The report determined that FDIC must strengthen its contract oversight management, and that it does not have an effective contracting management information system to readily gather, analyze, and report portfolio-wide contract information across the agency. Read more [here](#).

Limitations on Subcontracting and Non-Manufacturer Rule Standardized in DFARS

DoD issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement an SBA rule that implemented a section of the NDAA for fiscal year 2013 to revise and standardize the limitations on subcontracting and the non-manufacturer rule, which apply to small business concerns, including participants in the 8(a) Program. SBA's final rule implemented section 1651 of the NDAA for fiscal year 2013 (Pub. L. 112-239, 15 U.S.C. 657s), which revised and standardized the limitations on subcontracting and the non-manufacturer rule that apply to small business concerns, including 8(a) Program participants, under procurements conducted pursuant to Federal Acquisition Regulation part 19, Small Business Programs. Read more [here](#).

VA Excludes Other Agencies with Temporary Price Reductions

The Department of Veterans Affairs (VA) OIG released a report titled: "The Impact of VA Allowing Government Agencies to Be Excluded from Temporary Price Reductions on Federal Supply Schedule Pharmaceutical Contracts." The VA is responsible for negotiating Federal Supply Schedule (FSS) prices (volume discounts) for billions of dollars of pharmaceuticals on behalf of all federal agencies. This review examined how VA administers temporary price reductions (TPRs) and the impact on government-wide contract negotiations when VA accepted TPRs offered only to certain government agencies and not all authorized FSS users. The VA OIG found that the National Acquisition Center has been routinely facilitating the award of TPRs that benefit certain agencies and exclude other authorized users. In many instances, the TPRs were exclusive to VA, resulting in additional savings for the VA, but not other federal agencies. The OIG found no authority whereby the VA may award prices on the FSS for its sole benefit, or only one or more other agencies' benefits, while allowing other federal agencies to be denied a benefit authorized by law. Read more [here](#).

Related Government Contracts Law Presentations by PilieroMazza

EVENT: Growth Through Joint Ventures and Mentor-Protégé Relationships, November 8, 2019, Speakers: [Peter Ford](#) and [Meghan Leemon](#). [\[Read More\]](#)

WEBINAR: Labor and Employment for Government Contractors—Yes, There Is a Difference! November 12, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

WEBINAR: Teaming, Subcontracting, & Joint Ventures, November 13, 2019, Speaker: [Tony Franco](#). [\[Read More\]](#)

WEBINAR: PCI Subcontracting Summit 2019: Administration, November 19, 2019, Speaker: [Isaias "Cy" Alba](#). [\[Read More\]](#)

EVENT: Top Legal Questions from Government Contractors, November 21, 2019, Speaker: [Tony Franco](#). [\[Read More\]](#)

WEBINAR: Key Labor & Employment Rules for Government Contractors, December 4, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

WEBINAR: Resolving Onboarding Mistakes That Cause Legal Problems on Federal Contracts, December 11, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

SBA Seeks Comments on Potential Regulatory Changes to Export Loan Program

SBA [published](#) an Advanced Notice of Proposed Rulemaking (ANPRM) that seeks comments on potential changes to the regulations governing its Export Loan Programs. SBA's Export Loan Programs provide access to capital for U.S. small business concerns to support expansion into international markets and the growth of U.S. small business exports. SBA is soliciting comments on how the Agency can improve the products, procedures, forms, and reporting requirements of the Export Loan Programs. Feedback will be used to modernize the Export Loan Programs, increase lender participation and usage, ensure that U.S. small businesses can finance their international sales, and increase U.S. small business exports. SBA is seeking public comments on the ANPRM by November 18, 2019. Read more [here](#).

Related Small Business Programs & Advisory Services Presentations by PilieroMazza

EVENT: Growth Through Joint Ventures and Mentor-Protégé Relationships, November 8, 2019, Speakers: [Peter Ford](#) and [Meghan Leemon](#). [\[Read More\]](#)

WEBINAR: PCI Subcontracting Summit 2019: Administration, November 19, 2019, Speaker: [Isaias "Cy" Alba](#). [\[Read More\]](#)

CYBERSECURITY & DATA PRIVACY

Related Cybersecurity & Data Privacy Presentations by PilieroMazza

WEBINAR: The State of Affairs for Data Privacy—Trends in State Legislation and What They Mean, November 19, 2019, Speakers: [Dave Shafer](#) and [Emily Rouleau](#). [\[Read More\]](#)

BUSINESS & CORPORATE LAW

Related Business & Corporate Law Presentations by PilieroMazza

EVENT: Capture Planning Session, November 8, 2019, Speaker: [Cy Alba](#). [\[Read More\]](#)

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PilieroMazza – a business law firm – serves as a strategic partner to government contractors and commercial businesses from across the United States in numerous industries, including:

- Aerospace and Defense
- Construction
- Cybersecurity & Data Privacy
- Emerging and Developing Industries
- Environmental Remediation
- Healthcare
- Information Technology
- Manufacturers and Suppliers
- Professional Services
- Solar Energy
- Telecommunications
- Transportation

We deliver results for our clients by implementing legal and business solutions that take the client's best interests into consideration. Moreover, PilieroMazza's efficient operational structure and lean approach to staffing matters translates into competitive pricing for our clients, while providing the highest standard of client service and legal acumen.

With lawyers in Washington, DC; Boulder, CO; Annapolis, MD; and Chicago, IL, PilieroMazza is privileged to represent clients in the following areas:

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