

PiliroMazza Weekly Update for Government Contractors and Commercial Businesses

August 12, 2019

If you have questions concerning the content below, please visit this [link](#).

GOVERNMENT CONTRACTS LAW

This Project Is Behind Schedule - What Is a Contractor to Do?, August 6, 2019, [Michelle Litteken](#)

Construction projects rarely, if ever, go precisely as planned. One of the most common issues government contractors face is falling behind schedule. A schedule is developed, and then the contractor is confronted with differing site conditions, changes, or a litany of other causes of delay. The contract completion date that seemed easily achievable when performance began may now appear to be impossible to meet. ***What should a government contractor do to ensure they are compensated and avoid liquidated damages?*** [\[Read More\]](#)

General Services Administration - Law360 reports that GSA's pending plan to allow commercial off-the-shelf purchases through an e-commerce portal effectively undermines another effort to streamline its biggest acquisition program. Although federal contractors have largely welcomed the GSA's pending consolidation of its Federal Supply Schedule contracts from 24 separate contracts into one broad contract, its push to establish an even more streamlined e-commerce portal cuts heavily into the Schedules' reason to exist—providing an easy way for federal agencies to buy commercial products.

Department of Defense, General Services Administration, and National Aeronautics and Space Administration are issuing a final rule amending the Federal Acquisition Regulation to implement a new clause for use in multiple-award indefinite-delivery indefinite-quantity contracts that provides information on the task-order and delivery-order ombudsman. The Final Rule is effective September 6, 2019. The Final Rule is found [here](#).

Department of Defense - DoD issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to partially implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 that provides a preference for the acquisition of certain commercial services in contracts that exceed the simplified acquisition threshold. The statute provides for a two-tier approval process, depending on the value of the acquisition, if no commercial items are suitable. The published version can be found [here](#).

SCOTUS Strengthens Protections for Federal Government Contractors Under FOIA, August 9, 2019, [Patrick Burns](#)

The Freedom of Information Act ("FOIA" or "the Act") provides private citizens access to information in the possession of government agencies that is not otherwise publically available. ***Unfortunately, an***

agency's disclosure can potentially include confidential information of a government contractor, such as proposal content, pricing structures, and other proprietary material. Such disclosures are concerning because publically disclosed information can be used by competitors to the great detriment of the contractor. Luckily for contractors, FOIA's power is not unlimited. [\[Read More\]](#)

WEBINAR: SBA Proposed Rule Changes and How They Will Impact Government Contractors, August 20, 2019, Speakers: [Megan Connor](#) and [Peter Ford](#). [\[Read More\]](#)

EVENT: Forming CTAs on GSA Schedules, September 5, 2019, Speaker: [Katie Flood](#). [\[Read More\]](#)

EVENT: Legal and Practical Perspectives on Mergers & Acquisitions, September 5, 2019, Speakers: [Jon Williams](#) and [Kathryn Hickey](#). [\[Read More\]](#)

WEBINAR: Top 10 Corporate Mistakes that Small Businesses Make in Federal Contracting, September 19, 2019, Speakers: [Isaias "Cy" Alba](#) and [Kathryn Hickey](#). [\[Read More\]](#)

WEBINAR: Subcontract Pricing, September 24, 2019, Speaker: [Isaias "Cy" Alba](#). [\[Read More\]](#)

EVENT: Growth Through Joint Ventures and Mentor-Protégé Relationships, November 6, 2019, Speakers: [Peter Ford](#) and [Meghan Leemon](#). [\[Read More\]](#)

FALSE CLAIMS ACT / LITIGATION & DISPUTE RESOLUTION / LABOR & EMPLOYMENT LAW

PODCAST: PilieroMazza's *GovCon Live!* presents "Ex Rel. Radio," our multi-part series on the False Claims Act, which will include commentary on potential pitfalls for your company, enforcement issues, and emerging trends. Stay tuned for our next episode "**Building Compliance: Construction Industry Concerns Under FCA**" with [Sarah Nash](#) and [Jon Williams](#), which goes live the week of August 19th. [\[Read More\]](#)

BUSINESS & CORPORATE LAW

EVENT: Legal and Practical Perspectives on Mergers & Acquisitions, September 5, 2019, Speakers: [Jon Williams](#) and [Kathryn Hickey](#). [\[Read More\]](#)

WEBINAR: Top 10 Corporate Mistakes that Small Businesses Make in Federal Contracting, September 19, 2019, Speakers: [Isaias "Cy" Alba](#) and [Kathryn Hickey](#). [\[Read More\]](#)

WEBINAR: Incentive Compensation Plans Designed to Retain Talent and Grow the Business, October 15, 2019, Speaker: [Kathryn Hickey](#). [\[Read More\]](#)

LITIGATION & DISPUTE RESOLUTION

SCOTUS Strengthens Protections for Federal Government Contractors Under FOIA, August 9, 2019, [Patrick Burns](#)

The Freedom of Information Act ("FOIA" or "the Act") provides private citizens access to information in the possession of government agencies that is not otherwise publically available. ***Unfortunately, an agency's disclosure can potentially include confidential information of a government contractor, such***

as proposal content, pricing structures, and other proprietary material. Such disclosures are concerning because publically disclosed information can be used by competitors to the great detriment of the contractor. Luckily for contractors, FOIA's power is not unlimited. [\[Read More\]](#)

CYBERSECURITY & DATA PRIVACY

Department of Homeland Security - Nextgov reports that DHS is building a contract vehicle of vendors able to manage its 17 unclassified security operations centers—the cybersecurity hubs for the government’s central cybersecurity agency. The single contract will likely have multiple awardees, each capable of managing the entirety of operations at each of DHS’s 17 security centers. DHS issued a [request for information](#) outlining its tentative acquisition strategy and asking for feedback from industry on capabilities and approach to obtain additional resources in times of crisis, such as during a large-scale cyberattack. Read more [here](#).

LABOR & EMPLOYMENT LAW

PODCAST: PilieroMazza’s *GovCon Live!* presents “*Ex Rel. Radio*,” our multi-part series on the False Claims Act, which will include commentary on potential pitfalls for your company, enforcement issues, and emerging trends. Stay tuned for our next episode “**Building Compliance: Construction Industry Concerns Under FCA**” with [Sarah Nash](#) and [Jon Williams](#), which goes live the week of August 19th. [\[Read More\]](#)

According to Law360, Federal attorneys said that a New York construction firm agreed to pay \$435,000 to resolve allegations that it misclassified workers on federally funded projects in order to avoid paying higher wages, and actively worked to conceal its actions. Nagan Construction admitted in New York federal court to underpaying 20 workers on the two construction projects by classifying them as laborers, a title for those performing unskilled tasks like cleaning and equipment transportation. Laborers are paid at a lower prevailing wage rate than those who perform skilled tasks such as carpentry and bricklaying—jobs the workers actually performed, the government said.

According to BGov, the national opioid crisis and the complexities of federal law mean employers must walk a fine line in trying to navigate drug addiction among their workforce. Drug addiction is protected as a disability—with one notable exception—putting employers at risk of discrimination claims if they are not careful. However, the illegal use exception prevents a worker who is using illegal drugs from claiming disability protection under the Americans with Disabilities Act. But, “case law is all over the map” in terms of how recent the drug use must be to be considered current, a Justice Department attorney said recently. To avoid discrimination claims, employers must avoid a “zero tolerance” approach to workers who test positive for drug use.

EVENT: Clearing a DOL Audit, September 25, 2019, Speakers: [Nichole Atallah](#) and [Sarah Nash](#). [\[Read More\]](#)

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

Department of Defense, General Services Administration, and National Aeronautics and Space Administration will issue a proposed rule to amend the Federal Acquisition Regulation to support the Small Business Administration’s policy of including overseas contracts in agency small business

contracting goals. This amendment is consistent with SBA's regulatory changes, which clarify that small business contracting provisions, e.g., set-asides, may apply to contracts performed overseas. The unpublished version can be found [here](#).

Department of Defense - DoD issued a proposed rule to amend the DFARS to implement a section of the NDAA for Fiscal Year 2017 that provides limits on the scope of review by the Small Business Administration's procurement center representatives for certain solicitations awarded by or for DoD. The published version can be found [here](#).

Department of Defense, General Services Administration, and National Aeronautics and Space Administration issued a Small Entity Compliance Guide. The Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2019-04, which amends the Federal Acquisition Regulation. Read more [here](#).

WEBINAR: SBA Proposed Rule Changes and How They Will Impact Government Contractors, August 20, 2019, Speakers: [Megan Connor](#) and [Peter Ford](#). [[Read More](#)]

EVENT: Top 10 Corporate Mistakes that Small Businesses Make in Federal Contracting, September 19, 2019, Speakers: [Isaias "Cy" Alba](#) and [Kathryn Hickey](#). [[Read More](#)]

EVENT: Growth Through Joint Ventures and Mentor-Protégé Relationships, November 6, 2019, Speakers: [Peter Ford](#) and [Meghan Leemon](#). [[Read More](#)]

About PilieroMazza

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:

- [Audits & Investigations](#)
- [Business & Corporate Law](#)
- [Cybersecurity & Data Privacy](#)
- [False Claims Act](#)
- [Government Contracts Law](#)
- [Intellectual Property & Technology Rights](#)
- [Labor & Employment Law](#)
- [Litigation & Dispute Resolution](#)
- [Mergers & Acquisitions](#)
- [Native American Law](#)
- [Private Equity and Venture Capital](#)
- [Small Business Programs & Advisory Services](#)

Visit us at www.PilieroMazza.com.

###

Disclaimer

This communication does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader. If you require legal guidance in any specific situation, you should engage a qualified lawyer for that purpose. Prior results do not guarantee a similar outcome.

Attorney Advertising

It is possible that under the laws, rules, or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

©2019 PilieroMazza PLLC
All rights reserved.