



PilierioMazza Weekly Update for Government Contractors and Commercial Businesses

September 10, 2019

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GOVERNMENT CONTRACTS LAW

Late Is Late—Even on the GSA Schedule, September 9, 2019, [Katie Flood](#)

In a recent [blog](#), we discussed the “late is late” rule in government contracting which has been the cause of many protests and much consternation among government contractors. However, the Government Accountability Office (GAO) and the Court of Federal Claims (COFC) have consistently held that it is proper for an agency to reject a late offer, even if the offer is only slightly late. Recently, COFC applied this rule to a General Services Administration (GSA) Schedule purchase—specifically in *Criterion Systems, Inc. v. United States*, in which the court held that an offer that was a mere 90 seconds late, was too late to be considered for award. ***No matter the type of procurement or the agency involved, government contractors should be careful to submit all their materials ahead of the deadline.*** [\[Read More\]](#)

5 Things Government Contractors Should Know About Enhanced Debriefings, September 5, 2019, [Michelle Litteken](#)

With the end of the fiscal year approaching and the frequency of contract awards increasing, many government contractors will be focusing on post-award debriefings. The Department of Defense (DOD) implemented enhanced post-award debriefings last year, and contractors often have questions about the process. ***Here are five things contractors should know about enhanced debriefings, which can be beneficial to a government contractor before becoming involved in a bid protest.*** [\[Read More\]](#)

Department of Defense – DOD, GSA, and the National Aeronautics and Space Administration (NASA) submitted a notice to the Office of Management and Budget (OMB) requesting to review and approve a revision and renewal of a previously approved information collection requirement concerning limitation of costs/funds. In accordance with Federal Acquisition Regulation (FAR) 52.232-20 and 52.32-22, firms performing under fully funded or incrementally funded cost-reimbursement federal contracts are required to notify the contracting officer in writing whenever they have reason to believe that either the costs the contractors expect to incur under the contracts in the next 60 days will exceed 75 percent of the estimated cost of the contracts or that the total cost for the performance of the contracts will be greater or substantially less than estimated. As part of the notification, the contractors must provide a revised estimate of total cost. The frequency of this collection of information is variable, contingent upon both funding and spending patterns. Read the published version [here](#).

Government Accountability Office – GAO released a report titled “Defense Management: Observations on the Department of Defense’s (DOD) Business Reform Efforts and Plan.” Section 921 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 required the Secretary of Defense, acting through the Chief Management Officer, to submit to the congressional defense committees a plan, schedule, and cost estimate for reforms of the DOD’s enterprise business operations to increase effectiveness and efficiency of mission execution. This report assesses the feasibility of the plan submitted, and found that it contained the required

schedule and cost estimates to reform certain business operations, such as logistics, human resources, and contracting. However, many of its initiatives are preliminary, making it hard to assess the feasibility of future reforms. Additionally, the GAO could not validate DOD's claims of cost savings related to business reforms it has already made. Read the full report [here](#).

Government Accountability Office – GAO released a report titled “Challenges and Policy Considerations Regarding Offshoring and Foreign Investment Risks.” This report describes (1) the factors that affect analysis of foreign direct investment and offshoring related to DOD's supplier base, and (2) the benefits and risks to the U.S. defense supplier base associated with foreign direct investment and offshoring and policy considerations to address those risks. Panelists convened for the report noted that offshoring can lower costs and provide better access to foreign workers and markets. When companies that offshore contract with DOD, they can pass those benefits along. Foreign investment can help U.S. companies grow.

The panelists also outlined some of the risks of relying on a globalized supply chain. Specifically:

- Intellectual property—Foreign investors in U.S. companies can get access to the sensitive technologies those companies develop. When those investors are from the nation's strategic competitors (such as China or Russia), technology transfer is a concern.
- Domestic production—If the United States sends too much production abroad, the skills of the nation's own workforce can erode.
- Source materials—DOD relies on foreign suppliers for parts and materials such as rare earth metals that are crucial to many weapon systems. Geopolitical conflicts can compromise access to foreign supplies to meet current and future needs.

Panelists highlighted ways to reduce these risks, such as by sharing information with U.S. companies on specific risks related to foreign suppliers. Read the full report [here](#).

Government Accountability Office – GAO released a report titled “Steps Needed to Identify Acquisition Training Needs for Non-Acquisition Personnel.” This report addresses the extent to which DOD can identify (1) non-acquisition personnel supporting acquisitions, and (2) their need for acquisition training. The report found that DOD has identified some of the non-acquisition personnel performing certain acquisition-related duties, but has not made as much progress identifying those involved in services acquisitions. DOD also has not comprehensively considered the acquisition-related training needs for non-acquisition personnel. Read the full report [here](#).

Related Government Contracts Law Presentations by PilieroMazza

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 8, 2019, Speakers: [Peter Ford](#) and [Meghan Leemon](#). [\[Read More\]](#)

FALSE CLAIMS ACT

Department of Justice – The Long Island aerospace and defense contractor Arkwin Industries, Inc. agreed to pay a \$2.6 million settlement to the United States after self-disclosing overbilling of the government and its prime contractors. Arkwin detected an error in its accounting systems that had double-counted worker hours spent performing inspections of its products. Arkwin then self-disclosed the discovery to the United States and undertook an internal investigation by outside counsel and a forensic accounting team. After concluding its investigation, Arkwin reported its findings. Read more [here](#).

Related False Claims Act Presentations by PilieroMazza

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

BUSINESS & CORPORATE LAW

Related Business & Corporate Law Presentations by PilieroMazza

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](#)]

LABOR & EMPLOYMENT LAW

Department of Labor – The Employee Benefits Security Administration issued a notice announcing the 198th meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans. The meeting will be held as a teleconference on September 25, 2019, and take place at the Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210 in C5515 Room 2. The meeting will run from 10:00 a.m. to approximately 4:00 p.m. The purpose of the meeting is to discuss reports/recommendations for the Secretary of Labor on the issues of: (1) Beyond Plan Audit Compliance: Improving the Financial Statement Audit Process and (2) Permissive Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Funds. Read the published version [here](#).

Department of Labor – The Office of Federal Contract Compliance Programs (OFCCP) announced [guidance](#) clarifying affirmative action program development for academic institutions and other contractors with campus-like settings, and advancing the White House Initiative on Historically Black Colleges and Universities (HBCUs). OFCCP also issued a complementary policy [directive](#) limiting compliance reviews of academic institutions to non-student employees. "The Department of Labor is committed to fulfilling the White House's promise to HBCUs, and providing quality guidance and assistance that aids contractors in meeting their legal requirements," said Acting Secretary of Labor Patrick Pizzella. "At the same time, the new compliance review directive recognizes that student workers have a unique relationship with academic institutions. Read more [here](#)."

National Labor Relations Board – Law360 reported that DuPont did not violate the National Labor Relations Act by making changes to retirees' medical benefits without negotiating with their unions, a divided National Labor Relations Board (NLRB) panel said in a decision overturning an agency judge's ruling. NLRB Chairman John Ring and member Marvin Kaplan said that language in plan documents giving the company the unilateral right to change benefits is effective even though its collective bargaining agreements with the International Brotherhood of Dupont Workers locals no longer reference the plan. "The decision takes from these unions the right to require their employer to bargain over the employer's elimination of retirement benefits — benefits that the employees represented by these unions have received for many years," said Kenneth Henley, who represents the unions.

Related Labor & Employment Law Presentations by PilieroMazza

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

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

Late Is Late—Even on the GSA Schedule, September 9, 2019, [Katie Flood](#)

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Department of Defense – DOD, GSA, and NASA issued a notice inviting the public to comment upon a request to review and approve a revision and renewal of a previously approved information collection requirement concerning quality assurance requirements. Supplies and services acquired under government contracts must conform to the contract's quality and quantity requirements. FAR part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard inspection clauses require the contractor to provide and maintain an inspection system that is acceptable to the government; give the government the right to make inspections and test while work is in progress; and require the contractor to keep complete, and make available to the government, records of its inspection work. Read the published version [here](#).

Department of Veterans Affairs – The VA issued a notice amending and updating its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in the FAR, to remove procedural guidance internal to VA into the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. VA is amending regulations for VAAR Case RIN 2900-AQ20—VA Acquisition Regulation: Contracting by Negotiation; Service Contracting. This amendment revises the table at 201.106 to reflect the addition of the new VAAR clause 852.237-73, Crime Control Act—Requirement for Background Checks and the corresponding new OMB control number 2900-0863. It also removes 815.303, Responsibilities, and 815.304, Evaluation factors and significant subfactors, and moves them to the VAAM as they contain procedural guidance that is internal to the VA. Read the published version [here](#).

Related Small Business Programs & Advisory Services Presentations by PilieroMazza

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

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

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