

**PiliroMazza Weekly Update for
Government Contractors and Commercial Businesses**
May 31, 2019

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GOVERNMENT CONTRACTS LAW

Department of Defense – The DoD extended the comment period on a proposed rule that would amend the Defense Federal Acquisition Regulation Supplement to implement sections of the National Defense Authorization Act for Fiscal Year 2017 that require review and approval for certain cost-reimbursement contract types at specified thresholds and established time periods and the use of firm fixed-price contract types for foreign military sales unless an exception or waiver applies. The comment period has been extended to June 14, 2019. [84 Fed. Reg. 103, 24734](#).

U.S. Senate – According to Law360, the Senate Armed Services Committee passed out of committee a \$750 billion version of the annual defense budget and policy bill that includes acquisition changes amongst its many provisions. The bill's reported acquisition changes include a pilot program to evaluate intellectual property in acquisition programs and a review of the oversight of service contracts by the DoD. The bill will now be considered by the full Senate.

Federal Contractors – According to Bloomberg Government, the number of federal contractors working on unclassified prime contracts is at its lowest level in 10 years despite a steady rise in government contract spending in recent years. Per Bloomberg Government, contract and industry data suggest a number of possible explanations for the last decade's supplier decline, including, among others, (1) post-war spending reductions by the DoD; (2) category management-driven spending on large, preferred multiple award contracts; (3) increasingly sophisticated requirements for cutting-edge technology that fewer companies can meet; (4) automation of previously labor-intensive tasks; (4) vendor mergers and acquisitions; and (5) continuing budget resolutions (CRs) and other budget irregularities.

Office of Management and Budget – The OMB Deputy Administrator for Federal Procurement Policy issued a [memorandum](#) seeking to improve awareness of vendor engagement strategies that Federal procurement thought leaders are using to create a more responsive buying process, modernize the acquisition culture, and deliver greater value to the taxpayer.



Join us on **June 5, 2019** for **PiliroMazza's half-day conference "Gaining a Competitive Edge through Cyber, Data, & Personnel Security."** Visit this [link](#) for more information and to register.

Challenging a Negative CPARS: What Remedies Are Available? May 22, 2019, [Samuel S. Finnerty](#)

As any experienced government contractor knows, poor performance under a federal contract can have significant consequences. Not only can it lead to contract termination and damages, but it can also affect a contractor's ability to obtain future work, as agencies are generally required to consider past performance information posted on the Contractor Performance Assessment Reporting System ("CPARS") when making source selection decisions. Because a CPARS rating is generally valid for 3 years (6 years for construction/architect-engineer contracts), a contractor may be inclined to challenge a negative CPARS if it believes it has been unfairly evaluated. As outlined below, there are a number of ways this can be done. However, the specific remedies available when challenging a negative CPARS will depend largely on the venue/juncture at which relief is obtained. [\[Read More\]](#).

EVENT: WOSB Program Training, 2019 Women Impacting Public Policy (WIPP) Business Leadership Conference, June 24, 2019, Speaker, [Megan Connor](#). [\[Register\]](#).

CYBERSECURITY & DATA PRIVACY

EVENT: Gaining a Competitive Edge through Cyber, Data, & Personnel Security, June 5, 2019, Moderator, [Jonathan Williams](#). [\[Register\]](#).

LABOR & EMPLOYMENT LAW

U.S. House of Representatives – According to Law360, the House passed a bill that would prohibit discrimination based on sexual orientation and gender identity in the workplace, as well as several other facets of public life. [H.R. 5](#), or the Equality Act, would amend several civil rights laws to protect members of the LGBTQ community from discrimination in employment, housing, public accommodations, education, federally funded programs, credit, and jury service.

Office of Federal Contract Compliance Programs – According to Law360, the OFCCP has indicated it will update its stance on religiously affiliated organizations, which could result in federal contractors getting more leeway to claim they are exempt from certain workplace anti-discrimination requirements, like those that protect LGBT workers.

Department of Labor – According to Bloomberg Government, the DOL surprised many when it announced that it was considering making changes to the Family and Medical Leave Act (FMLA). Per Bloomberg Government, the DOL has not updated regulations interpreting the FMLA in about 10 years, but the DOL said in a spring regulatory agenda notice that it planned to ask for public feedback on (1) how to better protect and suit the needs of workers and (2) reduce the administrative and compliance burdens on employers.

Halting Employee's Right to Report Cybersecurity Noncompliance Can Land Government Contractors in Hot Water, May 28, 2019, [Sarah L. Nash](#)

Last week signaled a potential rude awakening for government contractors subject to cybersecurity requirements. A California U.S. district court ruled that allegations against Aerojet Rocketdyne could progress following a former employee's complaint that the company terminated his employment after he disclosed cybersecurity failures to the company's board of directors and refused to sign documents

indicating that the company was compliant. Among the employee's chief allegations is a charge that the company violated the False Claims Act by falsely representing its level of compliance with applicable cybersecurity standards so it could appear eligible for certain federal government contract awards. [\[Read More\]](#).

WEBINAR: Employing Federal Contractors: An Overview of Labor and Employment Requirement for Government Contractors, June 19, 2019, Speaker, [Sarah Nash](#). [\[Register\]](#).

BUSINESS & CORPORATE LAW

Corporate Transactions and Affiliation Pitfalls, May 28, 2019, [Francis G. Massaro](#)

As a small business grows and expands, it may have opportunities to bring on new investors, provide equity incentives to obtain, incentivize and retain key employees and directors, and enter into acquisitions and other transactions with other entities. [\[Read More\]](#).

FALSE CLAIMS ACT / LITIGATION

In Win for Whistleblowers, Supreme Court Clarifies Statute of Limitations for False Claims Act Actions Where Government Elects Not to Intervene, May 20, 2019, [Timothy F. Valley](#)

Recently, in *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, the Supreme Court resolved a circuit split and clarified in a unanimous decision that the statute of limitations period for qui tam actions where the Government declines to intervene could extend to ten years, if the plaintiff can show when the Government knew or should have known of the material facts related to the alleged false claim. The Supreme Court noted that under the False Claims Act, 31 U.S.C. § 3731(b), civil actions must be brought either (1) within six years of when the alleged violation occurred; or (2) "[three] years after 'the official of the United States charged with responsibility to act in the circumstances' knew or should have known the relevant facts, but not more than [ten] years after the violation" And, whichever period is later qualified as the limitations period, even if the Government chooses not to intervene in the action. [\[Read More\]](#).