



PilierioMazza Weekly Update for Government Contractors and Commercial Businesses

November 14, 2019

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Client Alert: This Just In! SBA's Implementation of HUBZone Changes and Small Business Runway Extension Act Coming Soon, November 14, 2019, [Samuel Finnerty](#)

On November 12-13, 2019, the U.S. Small Business Administration (SBA) hosted its 5th Annual Mentor Protégé Conference where SBA's John Klein, Associate General Counsel for Procurement Law, answered questions from the audience regarding various mentor-protégé issues. **Mr. Klein provided some key insights regarding recent and upcoming SBA rulemakings that will have a significant impact on small business government contractors. We outline some of these updates below, and will also host a breakfast seminar on November 18, 2019 where Mr. Klein and [Pamela Mazza](#) will offer an in-depth discussion on these and other changes (please visit this [link](#) for more information). [\[Read More\]](#)**

GOVERNMENT CONTRACTS LAW

Trouble with Tariffs? You May Have the Basis for an REA or a Claim, November 8, 2019, [Michelle Litteken](#)

In recent years, tariffs have been imposed on an array of goods, ranging from electronics to solar panels to industrial equipment. For companies bidding on contracts now, the tariffs may not be a concern, as the tariffs can be factored into the pricing proposal. **However, for government contractors performing contracts that were awarded before the tariffs were imposed, the tariffs may result in increased and unanticipated costs. Those increased costs may provide the basis for a request for equitable adjustment (REA) or a claim under the Contract Disputes Act. [\[Read More\]](#)**

2019 GAO Bid Protest Annual Report: Number of Protests Filed Drops by 16%, November 8, 2019, [Michelle Litteken](#)

The Government Accountability Office (GAO) recently issued its [annual report to Congress](#), which provides data concerning protest filings for Fiscal Year (FY) 2019. GAO's annual report confirms a sharp decrease in the number of protests filed. **Notably, 2,198 protests were filed in FY 2019—a 16% decrease from FY 2018; however, the effectiveness rate of protests in FY 2019 was 44%, which was consistent with the effectiveness rate in FY 2018. [\[Read More\]](#)**

Small Talk: SBA Size Calculation for Government Contractors, November 4, 2019, [Meghan Leemon](#)

With [changes](#) to size standards this year based on inflation estimated to enable 89,730 firms to gain small business status, annual size recertification [requirements](#), and potentially severe [penalties](#) for misrepresentation of size, it is essential that government contractors calculate their size correctly and keep their System for Award Management profile up to date. This is often daunting, as size standards differ by industry and, depending on your industry and the procurement you are pursuing, you may have to calculate your size with employee numbers or annual receipts, which includes those of your affiliates. This is a simple guide for calculating your company's size, with supporting resources from SBA. [\[Read More\]](#)

Procurement Collusion Strike Force Announced

The Department of Justice (DOJ) announced the formation of the new Procurement Collusion Strike Force (PCSF), which will focus on deterring, detecting, investigating and prosecuting antitrust crimes, such as bid-rigging conspiracies and related fraudulent schemes, which undermine competition in government procurement, grant and program funding. Deputy Attorney General Jeffrey A. Rosen and Assistant Attorney General Makan Delrahim delivered remarks at the PCSF Press Conference, where Deputy Attorney General Rosen commented that PCSF will “target bid-rigging and other antitrust crimes that can cost American taxpayers billions of dollars each year by undermining the federal government’s processes for purchasing goods and services.” Assistant Attorney General Delrahim then introduced the U.S. Attorney partners and Inspector General partners of the Procurement Collusion Strike Force. Deputy Attorney General Jeffrey A. Rosen’s full remarks can be read [here](#), Assistant Attorney General Makan Delrahim’s full remarks can be read [here](#), and the DOJ’s official press release regarding the formation of the new Procurement Collusion Strike Force can be read [here](#).

Contractor Suspensions and Debarments Report

Government Executive reported that the number of contractor suspensions and debarments in fiscal year (FY) 2018 was nearly double that of 2009, when an interagency committee started formally tracking them, but federal agencies are also increasingly relying on alternative measures to resolve disputes. In FY 2018, agencies surveyed by the [Interagency Suspension and Debarment Committee](#) reported 480 suspensions (temporary exclusions when an investigation is ongoing), 1,542 proposed debarments, and 1,334 debarments (exclusions for a set period of time after an investigation or legal proceedings against a contractor), according to the committee’s [annual report](#). However, since FY 2014, the number of suspensions and debarments has been decreasing. Read more [here](#).

2020 DISA Tech-Related Service Contracts

Nextgov reported that DISA plans to award nearly 100 new contracts for tech-related services in FY 2020, with a dozen valued at more than \$100 million. DISA officials previewed major IT projects they expect to open up to vendors over the next year. Some of the more noteworthy opportunities included satellite communications for Air Force Space Command, a cloud platform for the [newly minted](#) Defense Counterintelligence and Security Agency, and a range of telecom services under the [Enterprise Infrastructure Solutions program](#). Vendors will also have the opportunity to participate in SHARKSEER, a program formerly run by the National Security Agency that uses artificial intelligence to defend Pentagon networks against zero-day exploits. DISA also released [a spreadsheet](#) detailing hundreds of other contracts the agency plans to solicit and bid in the coming years, many of which officials expect to award in FY 2020. According to the ranges provided in the document, the combined value of next year’s contracts could fall between \$4.1 billion and \$10.8 billion over their lifetimes. Read more [here](#).

Related Government Contracts Law Presentations by PilieroMazza

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

EVENT: SBA Proposed Rule Changes to 8(a) and Mentor-Protégé Programs, November 18, 2019, Speaker: [Pamela Mazza](#). [\[Read More\]](#)

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](#)]

CYBERSECURITY & DATA PRIVACY

Aventura Sells Vulnerable Equipment to Government

DOJ announced that a criminal complaint was unsealed in federal court in Brooklyn charging surveillance and security equipment company Aventura Technologies, Inc. and seven current and former employees with selling Chinese-made equipment with known cybersecurity vulnerability to government and private customers while falsely representing that the equipment was made in the United States. Aventura has generated more than \$88 million in sales revenue since November 2010, and the charged scheme has been ongoing since 2006. Read more [here](#).

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](#)]

LABOR & EMPLOYMENT LAW

DoL Issues NPRM Regarding Overtime Compensation for Salaried Nonexempt Employees

The Department of Labor's (DoL) Wage and Hour Division issued a notice of proposed rulemaking that would revise DoL's regulation for computing overtime compensation for salaried nonexempt employees who work hours that vary each week (fluctuating workweek) under the Fair Labor Standards Act (FLSA). The proposed rulemaking would clarify that payments in addition to the fixed salary are compatible with the use of the fluctuating workweek method of compensation, and that such payments must be included in the calculation of the regular rate as appropriate under the FLSA. The proposal would also add examples and make minor revisions to make the rule easier to understand. Comments to the proposed rule are due December 5, 2019. Read the published version [here](#).

Related Labor & Employment Law Presentations by PilieroMazza

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 Issues Proposed Rule that Would Merge the 8(a) and All-Small Mentor Protégé Programs

The Small Business Administration (SBA) issued a proposed rule to merge the 8(a) Business Development (BD) Mentor-Protégé Program and the All Small Mentor-Protégé Program to eliminate confusion and remove

unnecessary duplication of functions within SBA. The rule proposes to eliminate the requirement that 8(a) Participants seeking to be awarded an 8(a) contract as a joint venture submit the joint venture to SBA for review and approval prior to contract award, revise several 8(a) BD program regulations to reduce unnecessary or excessive burdens on 8(a) Participants, and clarify other related regulatory provisions to eliminate confusion among small businesses and procuring activities. In addition, except for orders and Blanket Purchase Agreements issued under the General Services Administration's Federal Supply Schedule Program, the rule proposes to require a business concern to recertify its size and/or socioeconomic status for all set-aside orders under unrestricted multiple award contracts (MAC). The rule also proposes to require a business concern to recertify its socioeconomic status for all set-aside orders where the required socioeconomic status for the order differs from that of the underlying set-aside MAC contract (e.g., HUBZone set-aside order against a small business set-aside MAC). Finally, except for orders or Blanket Purchase Agreements issued under any Federal Supply Schedule contract, the rule also allows for size and/or socioeconomic protests at the order-level for set-aside orders issued against unrestricted MACs, or for set-aside orders based on a different socioeconomic status from the underlying set-aside MAC. Comments to the proposed rule must be received on or before January 17, 2020. Read the published version [here](#). PilieroMazza's highlights are available [here](#).

Overview, Impact, and Relationship of SBA's OIG with Congress

The Congressional Research Service (CRS) reports that Congress created offices of inspector general (OIG) to assist in its oversight of the executive branch. OIGs provide independent, nonpartisan analysis, conducted in accordance with generally accepted government auditing standards, to identify and recommend ways to limit waste, fraud, and abuse in federal programs and enhance program and operational efficiency and effectiveness. OIGs' activities supplement and complement those of the GAO, which serves a similar, though not identical, role in assisting congressional oversight of the executive branch. Together, OIGs and GAO provide Congress with information and analysis needed to conduct effective oversight and, in the process, help Congress maintain its balance of power with the presidency. The SBA OIG was created under authority of the Inspector General Act of 1978 (P.L. 95-452, as amended). Its three primary statutory purposes are to

- conduct and supervise audits and investigations of the SBA's programs and operations;
- recommend policies designed to promote the economy, efficiency, and effectiveness of the SBA's programs and operations and to prevent and detect fraud and abuse; and
- keep both the SBA Administrator and Congress "fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action."

CRS examined the SBA OIG's statutory authorities; reporting requirements; funding; staffing and organizational structure; and recent activities. It also examined the SBA OIG's impact on monetary savings, SBA programs and operations, and legislation affecting the agency. Read more [here](#).

Related Small Business Programs & Advisory Services Presentations by PilieroMazza

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

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

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