

PilierioMazza Weekly Update for Government Contractors and Commercial Businesses

January 14, 2020

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PODCAST: Ex Rel. Radio – False Claims Act: The Risks to Small Business Government Contractors

“False Claims Act: The Risks to Small Business Government Contractors” is the fifth episode of “Ex Rel. Radio,” our multi-part series on the False Claims Act (FCA). In this episode, Firm Counsel [Michelle Litteken](#) joins our host, [Jon Williams](#), to discuss how the FCA relates to small business programs, potential risks these companies face, and strategies for avoiding a potentially costly FCA claim. For more information on PilieroMazza’s FCA team, please visit [this link](#). [\[Read More\]](#)

EVENT: Common Mistakes HR Professionals Make in Government Contracting, January 15, 2020, Speakers: [Nichole Atallah](#) and [Sarah Nash](#).

Working as a human resources (HR) professional in government contracting requires agility and understanding how additional federal regulations impact human capital management. During this presentation, PilieroMazza [Labor & Employment](#) attorneys will dive into the intersection between HR and government contractors. In particular, they will look at the most common mistakes that are made that lead to legal liability. This event will occur on January 15, 2020, at 5:30 PM at the Holiday Inn Dulles in Sterling, VA. Register [here](#).

ANNOUNCEMENT: Jason Blindauer Joins PilieroMazza’s Government Contracts Group

[PilieroMazza](#) is pleased to announce that [Jason Blindauer](#) has joined the Firm as an Associate in its [Government Contracts Group](#). Mr. Blindauer provides practical, detail-oriented counsel on a wide array of government contracting matters. [Tony Franco](#), Chair of the Government Contracts Group, remarked “*Jay has an impressive body of work in the government contracts sector. Our clients will certainly benefit from his years of experience.*” [\[Read More\]](#)

EVENT: Join the HUBZone Council as They Celebrate Their 20th Anniversary

On January 17, 2020, the HUBZone Contractors National Council will be hosting its first **EVER HUBZone Industry Awards Gala** in Baltimore, MD, at [Morgan State University](#) with a 1920s-themed party. The purpose of the event is to raise awareness for the HUBZone Program and highlight the social and economic impact the program is having throughout our nation’s most underdeveloped communities. Register [here](#).

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

SBA Extends Comment Period for Mentor-Protégé Program Consolidation

The Small Business Administration (SBA) extended the comment period for the proposed rule on the consolidation of mentor-protégé programs published in the Federal Register on November 8, 2019. The comment period was scheduled to close on January 17, 2020. SBA extended the comment period an additional 21 days in response to the significant level of interest generated by the proposed rule and requests from multiple stakeholders for an extension. Given the scope of the proposed rule and the nature of the issues

raised by the comments received to date, SBA believes that affected businesses need more time to review the proposal and prepare their comments. The comment period has been extended to February 7, 2020. Read the published version [here](#).

NATIVE AMERICAN LAW

The Implications of SBA's Proposed Rule Changes for Tribally Owned 8(a) Businesses, January 8, 2020, [Peter Ford](#) and [Emily Rouleau](#)

SBA recently published a [proposed rule](#) that would merge its mentor-protégé programs and amend many of its rules governing the 8(a) program. Our Firm's Managing Partner, [Pamela Mazza](#), [recently explained](#) the rule's significant implications for the government contracting community. In particular, SBA's proposed rule would make a number of changes to the 8(a) program and regulations applicable to tribally owned 8(a) businesses. ***Pam and her partner [Peter Ford](#) will be attending a tribal consultation meeting in Oklahoma City on January 16, 2020, where tribes and Alaska Native Corporations can weigh in on the changes SBA is proposing. In advance, we have highlighted a few of the proposed changes that may benefit these firms.*** [\[Read More\]](#)

CYBERSECURITY & DATA PRIVACY

DoD's Upcoming Cybersecurity Maturity Model Certification (CMMC): Still on Target? January 10, 2020, [Jon Williams](#) and [Anna Wright](#)

PilieroMazza has been [blogging](#) regularly over the past year about the Department of Defense's (DoD) highly anticipated CMMC. And there has been much to say, from the early stages of CMMC as a new "overarching standard," to its first public draft release, through its first major streamlining, and finally to its latest public draft release in early December 2019. The pace of developments is expected to increase in 2020 as DoD releases a compliance checklist, finalizes the certification standards, and begins accrediting third parties that will ultimately issue CMMCs to contractors. ***With CMMC expected to become a requirement of many DoD contracts by the end of this fiscal year, CMMC truly is a game-changer for any government contractor working directly for DoD or in the DoD supply chain.*** [\[Read More\]](#)

Technology Readiness Evaluation for Use in Acquisitions Programs and Projects

The Government Accountability Office released a report titled, "Technology Readiness Assessment Guide: Best Practices for Evaluating the Readiness of Technology for Use in Acquisitions Programs and Projects." The development of cutting-edge technologies is critical to many of the government's most costly acquisitions, including new weapons, satellites, nuclear facilities, and homeland security systems. Technology readiness assessments (TRA) are used to evaluate the maturity of technologies and whether they are developed enough to be incorporated into a system without too much risk. Technologies that are not as mature as recommended have been the source of program delays and cost increases. The report is intended to provide a better understanding of technology maturity and a framework for conducting high-quality TRAs. Read the full report [here](#).

Air Force Could Tap into Individuals' Online Data to Combat Insider Threats

Nextgov reported that the Air Force is looking into commercially available data sources that can ethically capture public information on people to help keep its officials up to speed on insider threats. According to a [request for information](#), the Air Force wants to pinpoint "Public Persona Cyber Data Sources," or services that can provide a wide range of data and information on specific individuals, in a way that's collected legally from the internet, and with a high degree of certainty. The Air Force was mandated by an executive order in 2011 and follow-on policy in 2012 to build and maintain a related capability to monitor insider threats. Read more [here](#).

FALSE CLAIMS ACT

DOJ Recovers over \$3 Billion in Fiscal Year 2019 FCA Cases

In a recent press release, the Department of Justice (DOJ) reported that it obtained more than \$3 billion in settlements and judgments from civil cases involving fraud and false claims against the government in the fiscal year ending September 30, 2019. Recoveries since 1986, when Congress substantially strengthened the civil FCA, now total more than \$62 billion. Of the more than \$3 billion in settlements and judgments recovered by DOJ this past fiscal year, \$2.6 billion relates to matters that involved the healthcare industry, including drug and medical device manufacturers, managed care providers, hospitals, pharmacies, hospice organizations, laboratories, and physicians. This is the tenth consecutive year that the department's civil healthcare fraud settlements and judgments have exceeded \$2 billion. The amounts included in the \$2.6 billion reflect only federal losses, but in many of these cases the department was instrumental in recovering additional millions of dollars for state Medicaid programs. Read more [here](#).

BUSINESS & CORPORATE LAW

Related Business & Corporate Law Presentations by PilieroMazza

Access to Capital: Resources for Scaling for Growth, February 13, 2020, Moderator: [Dave Shafer](#). [[Read More](#)]

2020 Reservation Economic Summit, March 1, 2020, Speakers: [Nichole Atallah](#) and [Kathryn Hickey](#). [[Read More](#)]

LABOR & EMPLOYMENT LAW

OPM Implements Database of Union Contracts

Government Executive reported that the Office of Personnel Management (OPM) launched an [online database](#) of current collective bargaining agreements between federal agencies and employee unions, a measure that officials said will "improve transparency" with the public. The database was first mandated by one of three controversial May 2018 executive orders aimed at making it easier to fire federal workers and reduce the influence of labor groups in the federal government. It was one of the few provisions of the workforce orders not challenged by unions in federal court. Read more [here](#).

FLSA and FMLA Opinion Letters

The Department of Labor (DoL) announced three new opinion letters that address compliance issues related to the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA). An opinion letter is an official, written opinion by DoL's Wage and Hour Division on how a particular law applies in specific circumstances presented by the person or entity that requested the letter.

The opinion letters issued are:

- FLSA2020-1: Addressing calculating overtime pay for a non-discretionary lump sum bonus paid at the end of a multi-week training period.
- FMLA2020-1-A: Addressing whether a combined general health district must count the employees of the county in which the health district is located for the purpose of determining FMLA eligibility for its employees.
- FLSA2020-2: Addressing whether per-project payments satisfy the salary basis test for exemption.

Read more [here](#).

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GOVERNMENT CONTRACTS LAW

NASA Proposed Rule Amends Acquisition Regulation Supplement to Require Purchase of Electronic Parts from Specified Parties

The National Aeronautics and Space Administration (NASA) issued a proposed rule amending the NASA Federal Acquisition Regulation Supplement to add new text that requires covered contractors and subcontractors of all tiers to use electronic parts that are currently in production and purchased from the original manufacturers of the parts, their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers. If the contractor does not purchase electronic parts as described above, they must purchase the parts from a NASA-identified supplier or contractor-approved supplier. The contractor will then assume responsibility and be required to inspect, test, and validate authentication of the parts. The contractor will also be required to obtain traceability information and provide this information to the contracting officer upon request. The selection of contractor-approved suppliers is subject to review and audit by the contracting officer. Read the published version [here](#).

GSA Updates Practices for Submitting and Distributing FSS Price Lists

The General Services Administration (GSA) issued a direct final rule with request for comments amending the General Services Administration Acquisition Regulation at part 552, Solicitation Provisions and Contract Clauses, to update practices for submitting and distributing Federal Supply Schedule (FSS) Price Lists. Specifically, GSA is amending clauses 552.238-77, Submission and Distribution of Authorized FSS Price Lists, and 552.23-82, Modifications. Under this rule, the contractor will submit its FSS price list on a common-use electronic medium as prescribed by GSA. Eligible ordering activities will utilize GSA's online shopping and ordering system to review a contractor's price lists. Read the published version [here](#).

GSA to Make Changes to MAS Consolidation Solicitation

Nextgov reported that GSA released [a set of updates](#) as part of the first refresh of the Multiple Award Schedule (MAS) consolidation solicitation—the vehicle that will replace the 24 schedules currently in place—to conform to changes in administration policy and clarify some technical details. The refresh will feature a number of updates, including incorporating the latest rule [prohibiting contracts that use telecommunication equipment produced by certain Chinese companies](#), including Huawei. The original rule was published in August and included in the first consolidation solicitation. Read more [here](#).

Class Deviation: Use of Fixed-Price Contracts for Foreign Military Sales

Effective immediately, until December 31, 2020, contracting officers are not required to use firm-fixed-price contracts for foreign military sales in accordance with Defense Federal Acquisition Regulation Supplement 225.7301-1. Read more [here](#).

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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:

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- [Business & Corporate Law](#)
- [Cybersecurity & Data Privacy](#)
- [False Claims Act](#)
- [Government Contracts Claims and Appeals](#)
- [Government Contracts Law](#)
- [Intellectual Property & Technology Rights](#)
- [Labor & Employment Law](#)
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