



## PilierioMazza Weekly Update for Government Contractors and Commercial Businesses

March 5, 2020

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

### **CLIENT ALERT: FAR Council Changes Rules Regarding Small Business Rerepresentation / Recertification and Multiple Award Contracts, March 3, 2020, [Sam Finnerty](#)**

On February 27, 2020, the FAR Council published a final [rule](#) that amends the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) in 2013. Although these “new” rules have been reflected in SBA regulations for some time, their addition to the FAR is significant because procurement officials do not always follow SBA’s rules, particularly if such rules are not incorporated in the FAR and, in turn, incorporated in a subject contract. ***All small business concerns should be aware of this rule change and consult with counsel regarding rerepresentation and recertification duties.*** [\[Read More\]](#)

### **CLIENT ALERT: BIA to Establish Procedures for Federally Recognizing Alaskan Tribes, March 2, 2020, [Peter Ford](#)**

On January 2, 2020, the Bureau of Indian Affairs (BIA) issued a [proposed rule](#) to create a new 25 Code of Federal Regulations (C.F.R.) Part 82 that would establish procedures for a non-federally recognized Alaska Native entity to be acknowledged as an Indian tribe by the federal government. This regulation is the first to establish a process for Alaska Native entities to be federally recognized as a tribe since the Alaska Amendment of the Indian Reorganization Act was enacted in 1936. ***This proposed rule opens the door for the creation of more Alaska Native Corporations and tribal businesses, potentially adding opportunities for tribal businesses to increase assets through new business collaborations and acquisitions.*** [\[Read More\]](#)

### **CLIENT ALERT: Coronavirus in the Workplace—What Employers Need to Know, March 2, 2020, [Nichole Atallah](#) and [Sarah Nash](#)**

***As the potential spread of coronavirus disease 2019 (COVID-19) in the U.S. becomes a very real possibility, employers should prepare to address the condition and concerns in the workplace.*** The Center for Disease Control and Prevention and the Occupational Safety and Health Administration recently issued [guidance](#) on steps to mitigate the spread of COVID-19. In light of this guidance, employers should consider implementing certain policies and procedures to continue to ensure a safe and healthy workplace. [\[Read More\]](#)

### **WEBINAR: CMMC Is Coming: Are You Ready?, March 17, 2020, [Jon Williams](#) and [Anna Wright](#)**

All contractors that work directly or indirectly on Department of Defense (DOD) contracts should be preparing to obtain the Cybersecurity Maturity Model Certification (CMMC). This important new certification, which DOD will eventually require for all DOD contracts, demonstrates your IT system’s capability for protecting DOD-sensitive information and will help you gain (or not lose) a competitive advantage. With third-party certifiers potentially starting to accept applications from contractors as soon as this summer, [PilierioMazza](#) is committed to helping government contractors understand the guidelines and what they need to do to prepare for the certification. Please join members of the Firm’s [Cybersecurity and Data Privacy](#) team on March 17, 2020, for a one-hour webinar on the CMMC. [\[Read More\]](#)

## **LITIGATION & DISPUTE RESOLUTION / FALSE CLAIMS ACT**

### **DOJ Inside Access Highlights 4 Things to Expect from the False Claims Act in 2020**, February 25, 2020, [Camilla Hundley](#)

Several weeks ago, my colleague [Matt Feinberg](#) highlighted “[4 Issues That Defined the False Claims Act \(FCA\) in 2019](#)” and made predictions about anticipated FCA trends for 2020. At the recent 2020 Advanced Forum on False Claims and Qui Tam Enforcement, Department of Justice (DOJ) Deputy Associate Attorney General Stephen Cox offered inside access to [DOJ’s prospective priorities in enforcing and reforming the FCA for 2020](#). *Below, we review the DOJ’s resolutions, which allow us to better anticipate and understand issues government contractors may face under the FCA moving forward.* [\[Read More\]](#)

## **LABOR & EMPLOYMENT LAW**

### **The Service Contract Right of First Refusal Rules Continue to Fall Away**, February 26, 2020, [Jason Blindauer](#)

On January 31, 2020, the Federal Register announced that the U.S. Department of Labor (DOL) rescinded the service contractor “right of first refusal” regulations at 29 C.F.R. Part 9. This was done to implement the President’s October 31, 2019, revocation of the 2009 Executive Order No. 13,495, Nondisplacement of Qualified Workers Under Service Contracts. DOL’s move was primarily administrative in nature, given that the President’s revocation order commanded executive agencies to stop enforcing the rules. [\[Read More\]](#)

### **NLRB Establishes NLRA Joint Employer Standard**

The National Labor Relations Board (NLRB) issued a final rule to carry out provisions of the National Labor Relations Act (NLRA) by establishing a standard for determining whether two employers are a joint employer under the NLRA. Under this final rule, an entity may be considered a joint employer of a separate employer’s employees only if the two share or codetermine the employees’ essential terms and conditions of employment, which are exclusively defined as wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction. Read the published version [here](#).

### **DOL Launches Learning System for Federal Contractors**

The DOL Office of Federal Contract Compliance Programs (OFCCP) reported that it released its first-ever Contractor Compliance Institute (CCI)—an interactive learning management system designed to help employers with federal contracts and subcontracts comply with OFCCP’s Equal Employment Opportunity regulations. Contractors can register for courses on the [CCI webpage](#). Read more [here](#).

## **GOVERNMENT CONTRACTS LAW**

### **Bloomberg Law Quotes Jon Williams on Acetris Drug Decision**, March 4, 2020

“I’m sure there are many manufacturers who have just seen their products become TAA-compliant overnight . . .,” said [Jon Williams](#), commenting on the U.S. Court of Appeals for the Federal Circuit’s February 10th [ruling](#) in [Acetris Health, LLC v. United States](#). Daniel Seiden of *Bloomberg Law* recently featured Jon’s comment in an article on the ruling, “[‘Buy American’ Drug Decision Opens Door to Foreign Supplies.](#)” [\[Read More\]](#)

### **Jon Williams Authors Article for Federal News Network: If VA Builds Warehouse, Distribution Capabilities for Sleep Therapy, Better Patient Care Will Not Come**, March 4, 2020, [Jon Williams](#)

Jon Williams was recently published in *Federal News Network* with an article on a flawed insourcing strategy by the Department of Veterans Affairs (VA) for critical medical devices. In February 2019, Jon wrote in *Federal News Network* about the VA’s plans to insource the warehousing and distribution of continuous positive airway pressure (CPAP) devices and related supplies that are used to treat a rapidly growing number of

veterans with respiratory disabilities. While VA's goal to improve veteran healthcare in sleep therapy is laudable, Jon wrote about why the VA is going about it the wrong way. Jon's latest article in *Federal News Network* can be read [here](#). Jon's February 2019 article can read [here](#).

**JEDI Protest Update: Pentagon Relies on Blue & Gold Fleet to Do Away with AWS's Allegations of Bias,** February 26, 2020, [Lauren Brier](#)

***Oftentimes, a decision not to file a pre-award protest can leave an unsuccessful offeror without an opportunity to be heard at the Court of Federal Claims.*** However, the extraordinary circumstances surrounding the JEDI Contract and the Trump Administration's ongoing, publicized aversion to Amazon could save Amazon Web Service's (AWS) bias allegations against the Pentagon from an early dismissal. [[Read More](#)]

### **DOD Seeks Comments on OCI Mitigation Plan Submission Requirement**

The Department of Defense (DOD) issued a request for comments on a proposed revision to the requirement that offerors submit a mitigation plan when there is an organizational conflict of interest (OCI) that can be resolved through mitigation.

DOD invites comments on:

- whether the proposed collection of information is necessary for the proper performance of the functions of DOD, including whether the information will have practical utility;
- the accuracy of the estimate of the burden of the proposed information collection;
- ways to enhance the quality, utility, and clarity of the information to be collected; and
- ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments are due April 27, 2020. Read the published version [here](#).

### **Agencies Seek Comments on "Buy American" Manufacturing Information Collection**

The General Services Administration's Regulatory Secretariat Division has requested that the Office of Management and Budget review and approve a revision and renewal of an information collection requirement regarding information that offerors must submit to comply with FAR provision 52.225-18, Place of Manufacture. This provision requires offerors of manufactured end products to provide information about whether the offered end products are predominantly manufactured in the U.S. The data is necessary for analysis of the application of the Buy American statute and the trade agreements. Comments are due March 30, 2020. Read the published version [here](#).

### **USAID Streamlines Warrant Issuance Process**

The U.S. Agency for International Development (USAID) issued a final rule amending the Agency for International Development Acquisition Regulation (AIDAR) to streamline procedures for issuing contracting officer and agreement officer warrants to U.S. Personal Services Contractors (US PSCs) and Cooperating Country National Personal Services Contractors (CCN PSCs). A shortage of warranted contracting / agreement officers requires that USAID be able to designate highly qualified US PSCs and CCN PSCs as contracting / agreement officers in an expeditious manner. This rule is effective March 30, 2020. Read the published version [here](#).

## **SMALL BUSINESS PROGRAMS & ADVISORY SERVICES**

### **SBA Consolidates Guidance Documents**

Pursuant to Executive Order 13891, Promoting the Rule of Law Through Improved Agency Guidance Documents, SBA has advised the public of the availability of SBA guidance documents on its website. Read the published version [here](#). The SBA webpage with guidance documents is available [here](#).

### **SBA Launches SBIR Road Tour to Connect Tech Entrepreneurs with Federal R&D Funding**

SBA announced the launch of its sixth Small Business Innovation Research (SBIR) Road Tour. Set to stop at cities in the Southeast, Midwest, Rockies, and the Central South, the Road Tour will connect entrepreneurs working on advanced technology to one of the country's largest sources of early stage funding—the SBIR and Small Business Technology Transfer (STTR) programs. Read more [here](#). More information on the SBIR / STTR programs is available [here](#).

### **SBA Expands Services for Women Entrepreneurs in West Virginia**

SBA is accepting grant applications for a new Women's Business Center (WBC) in West Virginia. This expansion of SBA services is part of the agency's priority to open more doors for women entrepreneurs and increase access to resources in socially and economically disadvantaged communities. The total grant amount is \$75,000 each for up to two WBCs in West Virginia, which will cover the period from April 1, 2020, through Sept. 30, 2020.

- Eligible applicants for the grant must be private, nonprofit organizations with 501(c) tax-exempt status from the U.S. Treasury / Internal Revenue Service and must provide services in the state of West Virginia. This may include universities, foundations, chambers of commerce, or economic development institutions. Interested applicants must register and receive a certificate from SAM.gov as part of the grant application process.
- Applications will be accepted on [grants.gov](#) and all applications for Funding Opportunity Announcement No. OWBO-2020-04 must be submitted online by March 23, 2020.

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:

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