



PilierioMazza Weekly Update for Government Contractors and Commercial Businesses

March 20, 2020

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

ANNOUNCEMENT: PilieroMazza Forms "COVID-19 Client Response Team," March 18, 2020

To address the concerns of our clients and resource partners during and long after the coronavirus pandemic, [PilierioMazza](#) created the “COVID-19 Client Response Team.” The Team’s purpose is to offer government contractors and commercial businesses practical guidance with information and resources necessary to protect you, your business, and your personnel against the far-reaching impacts of COVID-19. Please also visit our “[COVID-19 Client Resource Center](#),” where you will find links to presentations, blogs, client alerts, and other additional resources. [[Read More](#)]

CLIENT ALERT: Breaking Down SBA's COVID-19 Economic Injury Disaster Loan, March 20, 2020, [David Shafer](#). [[Read More](#)]

CLIENT ALERT: COVID-19 Emergency Sick and Family Leave: What Employers Need to Know, March 18, 2020, [Nichole Atallah](#) and [Sarah Nash](#). [[Read More](#)]

WEBINAR: The False Claims Act: 2019 Takeaways and 2020 Trends, March 31, 2020, [Matt Feinberg](#) and [Jackie Unger](#). [[Read More](#)]

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

SBA to Provide Disaster Assistance Loans for Small Businesses Impacted by COVID-19

U.S. Small Business Administration (SBA) Administrator [Jovita Carranza](#) issued the following regarding COVID-19:

[The SBA] will work directly with state governors to provide targeted, low-interest disaster recovery loans to small businesses that have been severely impacted by the situation. Additionally, the SBA continues to assist small businesses with counseling and navigating their own preparedness plans through our network of 68 District Offices and numerous Resource Partners located around the country. The SBA will continue to provide every small business with the most effective and customer-focused response possible during these times of uncertainty.

SBA's Economic Injury Disaster Loans offer up to \$2 million in assistance for a small business. These loans can provide vital economic support to small businesses to help overcome temporary loss of revenue. Read more about accessing SBA's COVID-19 disaster relief lending [here](#).

CRS Examines SBA Economic Injury Disaster Loans for COVID-19

The Congressional Research Service (CRS) released an insight report titled, "SBA Economic Injury Disaster Loans for COVID-19," which considers whether SBA could provide economic injury disaster loans to eligible businesses and organizations that have suffered substantial loss as a result of COVID-19. The COVID-19 outbreak may have significant economic implications for businesses and nonprofit organizations including negative impacts on imports, global supply chains, and tourism. Furthermore, if COVID-19 becomes widespread or prolonged it may slow global growth, and some businesses may be forced to furlough or lay off workers. The insight report examines statutory bases for economic injury disaster loans and three declarations that could make economic injury disaster loans available. Read the full insight report [here](#).

GAO Report About SBA Disaster Loan Processing

The Government Accountability Office (GAO) released a report titled, "Small Business Administration: Disaster Loan Processing Was Timelier, but Planning Improvements and Pilot Program Evaluation Needed." SBA's Office of Disaster Assistance, which administers the Disaster Loan Program, regularly develops disaster plans, but does not discuss risks and risk mitigation in detail in its planning documents. As a result, there is concern that SBA may not be adequately prepared to respond to challenges that arise during its disaster response efforts. This report examines SBA's:

- planning for and response to the 2017 hurricanes;
- disaster loan application and review process; and
- implementation of the Express Bridge Loan Pilot Program.

Based on its analysis GAO made five recommendations to SBA, including that it more comprehensively document risks and plans to mitigate these risks and evaluate the implementation of the Express Bridge Loan Pilot Program. Read the full report [here](#).

SBA Adjusts Civil Monetary Penalties for Inflation

SBA issued a final rule amending its regulations to adjust for inflation the amount of certain civil monetary penalties that are within the jurisdiction of the agency. These adjustments comply with the requirement in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, to make annual adjustments to the penalties. This rule adjusts civil monetary penalties authorized by the Small Business Act, the Small Business Investment Act of 1958, the Program Fraud Civil Remedies Act, and the Byrd Amendment to the Federal Regulations of Lobbying Act. Read the published version [here](#).

GAO Cost Estimating and Assessment Guide Update

GAO released the first update to its *Cost Estimating and Assessment Guide*, which presents best practices associated with developing a reliable, high-quality cost estimate and those associated with effective management of program cost through the use of earned value management. The update includes improved descriptions of cost estimating steps, additional technical information, and an updated format. Read more [here](#).

BUSINESS & CORPORATE LAW

Purchase Agreement Components, Part 1: Options for Forms of Purchase Price Consideration in Acquisition Agreements, March 10, 2020, [Frank Massaro](#)

Whenever parties enter into negotiations to buy and sell a target company, one of the first points of discussion is the purchase price. In particular, the purchase price discussion often reflects the amount of cash that will be paid by the buyer to the seller at closing, and, in fact, nearly all acquisitions involve cash as all or part of the purchase price consideration. However, a cash payment at closing is not the only type of consideration that is common in acquisition agreements, and other forms of consideration and the timing of their payment to the seller can help parties manage the risks associated with the acquisition and create incentives for continued cooperation between the parties. ***This blog, Part 1 in a 5-part series, will provide a brief overview of forms of consideration and the timing of their payment common in acquisition agreements.*** [\[Read More\]](#)

LITIGATION & DISPUTE RESOLUTION

"Constructive Demotion" Claim Under Title VII Gains Traction in 4th Circuit District Courts, March 11, 2020, [Paul Mengel](#)

While the viability of a claim of “constructive demotion” under Title VII of the Civil Rights Act of 1964 (Title VII) has yet to be determined by the Fourth Circuit, a series of cases in district courts within the Circuit suggest that such might not be the case for long. In one such recent case, Judge Conrad of the U.S. District Court for the Western District of Virginia denied a defendant truck driver training company’s motion to dismiss a constructive demotion claim brought by a female instructor. Diana Salmons, the plaintiff in Salmons v. Commercial Driver Services, Inc., Case No. 7:19-cv-00532, claimed she was subjected to a pervasive pattern of sexual harassment at the hands of her male counterparts and, as a result, she brought a five-count complaint alleging sexual harassment, hostile work environment, discriminatory and retaliatory constructive demotion and constructive discharge, and sex-based wage discrimination, in violation of Title VII. ***Employers should be aware of the increased number of constructive demotion cases and the courts’ rulings on these matters, as well as conduct regular sexual harassment training to prevent this sort of behavior from occurring in the workplace.*** [\[Read More\]](#)

Related Litigation & Dispute Resolution Presentations by PilieroMazza

WEBINAR: The False Claims Act: 2019 Takeaways and 2020 Trends, March 31, 2020, Speakers: [Matt Feinberg](#) and [Jackie Unger](#). [\[Read More\]](#)

GOVERNMENT CONTRACTS LAW

Reselling Laptops and Tablets to the Federal Government Just Got Easier, March 12, 2020, [Jon Williams](#)

SBA issued a [class waiver](#) of the non-manufacturer rule (NMR) on March 9, 2020. Effective April 8, 2020, it waives the NMR for commercially available off-the-shelf (COTS) laptop and tablet computers. *The waiver is great news for small business resellers in the IT industry because the waiver will make it easier for these small businesses to comply with the NMR when reselling COTS laptops and tablets to federal agencies.* [[Read More](#)]

NASA OIG Examines Space Launch System Program Costs and Contracts

The National Aeronautics and Space Administration's (NASA) Office of Inspector General (OIG) released a report titled, "NASA's Management of Space Launch System Program Costs and Contracts." In 2011 and 2012, NASA contracted with three commercial companies—The Boeing Company (Boeing), Aerojet-Rocketdyne (Aerojet), and Northrop Grumman—to develop the major elements of the Space Launch System (SLS) for the first two Artemis missions. This report updates the status of development and examines the remaining major SLS elements and corresponding contracts with Boeing, Aerojet, and Northrop Grumman. Specifically, the OIG assessed the extent to which:

- the SLS Program is meeting cost and schedule goals for Artemis I,
- NASA is tracking and appropriately reporting overall cost and schedule goals, and
- the SLS Program is managing cost and schedule for key contracts.

Read the full report [here](#).

GAO Discusses Lessons Learned From Missile Defense Acquisition Efforts

GAO released the testimony of Cristina T. Chaplain, Director, Contracting and National Security Acquisitions, who testified before the U.S. House of Representatives, Committed on Armed Services, Subcommittee on Strategic Forces. Ms. Chaplain's testimony summarized the lessons GAO identified in prior reviews of the Missile Defense Agency (MDA) that can be applied to strengthen transparency and acquisition practices for developing and fielding missile defense elements. Specifically, this testimony provides information on (1) steps MDA has taken to increase transparency and reduce acquisition risks and (2) ongoing challenges associated with improving transparency and reducing high risk acquisition practices. Read the full testimony [here](#).

Related Government Contracts Law Presentations by PilieroMazza

WEBINAR: PCI Subcontracting Summit 2020: Risk Management, March 24, 2020, Speaker: [Isaias "Cy" Alba, IV](#). [[Read More](#)]

WEBINAR: The False Claims Act: 2019 Takeaways and 2020 Trends, March 31, 2020, Speakers: [Matt Feinberg](#) and [Jackie Unger](#). [[Read More](#)]

CYBERSECURITY & DATA PRIVACY

The Cyberspace Solarium Commission Releases Report Aimed at Defending Against Cyber Threats

The Cyberspace Solarium Commission (CSC) was [established](#) in the John S. McCain National Defense Authorization Act for Fiscal Year 2019 to "develop a consensus on a strategic approach to defending the United States in cyberspace against cyber attacks of significant consequences." In its report, the Cyberspace Solarium Commission's proposes a strategy of layered cyber deterrence, offering over eighty (80) recommendations to implement the strategy.

These recommendations are organized into 6 pillars:

- Reform the U.S. Government's Structure and Organization for Cyberspace.
- Strengthen Norms and Non-Military Tools.
- Promote National Resilience.
- Reshape the Cyber Ecosystem.
- Operationalize Cybersecurity Collaboration with the Private Sector.
- Preserve and Employ the Military Instrument of National Power.

Relevant reporting from *The Hill* is available [here](#). The full report and Executive Summary are available [here](#).

GAO Evaluates DOD's Data Access Pilot Program

GAO released a report titled, "Federally Funded Research and Development Centers: Improved Oversight and Evaluation Needed for DOD's Data Access Pilot Program." The Department of Defense (DOD) launched a three-year pilot program in December 2017 to enable a streamlined process to share certain sensitive data, such as data collected from its contractors, with its Federally Funded Research and Development Centers (FFRDC). At times, FFRDCs need to access such data to support DOD. The pilot was intended to reduce the burden on FFRDCs to seek permission from hundreds of contractors to access information needed for their research. Six of DOD's ten (10) FFRDCs have taken part in the pilot, enrolling a combined total of thirty-three (33) projects. DOD officials and FFRDC representatives reported that the streamlined process made the use of sensitive data feasible. As a result, FFRDCs with completed projects in GAO's sample indicated they were able to provide more robust analyses or insights to DOD. Read the full report [here](#).

LABOR & EMPLOYMENT LAW

Workplace Morals Clauses Take Hold Beyond Show Business in #MeToo Era

Bloomberg Law reports that morality clauses, which allow companies to terminate contracts based on behavior that could damage corporate reputation, largely appear in contracts for Hollywood actors and endorsement deals with stars or athletes. However, their use has expanded into companies' executive-level managers as employers on Wall Street and beyond seek to avoid backlash from executive misconduct that can affect their bottom lines. The clauses have become common in merger and acquisition agreements, publishing deals, investor contracts, and as a term of employment for top executives, according to a report from [Yale Law School](#), as well as media reports in the wake of #MeToo. Read more [here](#).

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](#)
- [Labor & Employment Law](#)
- [Litigation & Dispute Resolution](#)
- [Mergers & Acquisitions](#)
- [Native American Law](#)
- [Private Equity and Venture Capital](#)
- [Small Business Programs & Advisory Services](#)

Visit us at www.PilieroMazza.com.

###

Disclaimer

This communication does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader. If you require legal guidance in any specific situation, you should engage a qualified lawyer for that purpose. Prior results do not guarantee a similar outcome.

Attorney Advertising

It is possible that under the laws, rules, or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

©2020 PilieroMazza PLLC
All rights reserved.