

Pilieromazza Weekly Update for Government Contractors and Commercial Businesses

April 24, 2020

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COVID-19 CLIENT RESOURCE CENTER: To access resources for businesses navigating the COVID-19 crisis, we invite you to visit PilieroMazza's "[COVID-19 Client Resource Center](#)." Please contact covid19@pilieromazza.com for immediate assistance.

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

\$484 Billion Relief Bill Signed Into Law, \$310 Billion Allocated to Paycheck Protection Program, April 24, 2020, [Dave Shafer](#)

[H.R. 266](#), the Paycheck Protection Program and Health Care Enhancement Act, was signed into law today. Appropriating \$484 billion in relief for the COVID-19 outbreak, it provides additional funding for small business loans, healthcare providers, and COVID-19 testing. The Small Business Administration (SBA) has been unable to accept new applications for the Paycheck Protection Program or the COVID-19 related Economic Injury Disaster Loan (EIDL) assistance program (including EIDL Advances) because Coronavirus Aid, Relief, and Economic Security (CARES) Act funding was exhausted. The Paycheck Protection Program and Health Care Enhancement Act provides that much-needed funding. [[Read More](#)]

Do You Meet the Unique Eligibility Requirements for a Paycheck Protection Program Loan?, April 20, 2020, [Jon Williams](#)

If you missed the first batch of loans under the Paycheck Protection Program and want to determine if you are eligible for the next wave of funding that is expected to be added soon, this is what you need to know. [[Read More](#)]

President Trump Issues Memorandum Allowing VA to Change Contracts

President Trump issued a memorandum authorizing the Secretary of the Department of Veterans Affairs (VA) to exercise authority under Public Law 85-804, 50 U.S.C. § 1431 et seq., as amended. Under this statute, the President may authorize government agencies, which exercise functions related to national defense, to enter into contracts, amendments, or modifications and to make advance payments thereon whenever the President deems that such action would facilitate the national defense. President Trump's memorandum gives the VA the authority to act under this statute with respect to contracts performed in support of efforts by the VA to combat the virus.

However, the VA may only use this authority with regard to transactions directly responsive to the COVID-19 national emergency. The full memorandum can be found [here](#).

CRS Examines Legislation Affecting Small Business Management and Technical Assistance Training Programs

The Congressional Research Service (CRS) released a report titled, “Small Business Management and Technical Assistance Training Programs.” This report discusses recent legislation affecting federal small business management and technical assistance training programs, including:

- P.L. 114-88, the Recovery Improvements for Small Entities After Disaster Act of 2015;
- P.L. 115-141, the Consolidated Appropriations Act of 2018; and
- The CARES Act, which appropriated \$265 million for SBA’s entrepreneurial development programs.

Read the full report [here](#).

NDIA Releases CARES Act Tracker & Small Business Resources by Agency

The National Defense Industrial Association (NDIA) released a tracking sheet that cites pertinent provisions of the CARES Act and offers impact analysis on small business and Department of Defense (DOD) policy. The CARES Act tracker is available [here as an Excel download](#). The NDIA also released a reference guide of agency programs and updates relevant to COVID-19. The chart highlights key takeaways and provides web links to resources categorized by cash flow and contracting assistance. The small business resources chart is available [here](#).

For additional resources on navigating the COVID-19 crisis visit PilieroMazza’s “[COVID-19 Client Resource Center](#).”

GOVERNMENT CONTRACTS LAW

DOD Expects Three-Month Delays in Acquisition Programs

The Federal News Network reported that the Pentagon expects a three-month delay across the board for major acquisition programs, putting a kink in systems like the Ford Class Aircraft Carrier, the Columbia Class Ballistics Missile Submarine, and the Next Generation Operational Control System. “Particularly, we see a slowdown in the shipyards,” Ellen Lord, defense undersecretary for acquisition and sustainment, told reporters at the Pentagon. “Aviation is the most highly impacted sector that we have. Right now there isn’t any specific COVID penalty that we see for a specific program; however, we do anticipate a three-month slowdown in terms of execution.” Federal News Network reporting is available [here](#).

Defense Production Act Orders for COVID-19 Related Medical Equipment, April 7, 2020, [Jonathan Pomerance](#)

The outbreak of COVID-19 has rapidly increased demand for medical supplies and equipment such as N95 respirators, isolation gowns, isolation masks, surgical masks, eye protection, intensive care unit

equipment, and diagnostic testing supplies. To address the resulting shortage, President Trump issued Executive Order 13909 on March 18, 2020, under the Defense Production Act of 1950 (DPA), authorizing the Department of Health and Human Services to prioritize orders for “health and medical resources needed to respond to the spread of COVID-19, including personal protective equipment and ventilators.”

The DPA allows the government to issue “rated orders” which take priority over a contractor’s pre-existing government and commercial contracts. ***If you are a contractor providing medical equipment and you receive a rated order for the equipment identified above, it could disrupt pre-existing contracts and operations. Accordingly, it is critical to know your rights and obligations under the DPA.*** [\[Read More\]](#)

OMB Releases Guidance to Clarify CARES Act Contracting Provisions

Government Executive reported that the Office of Management and Budget (OMB) published a memo to supplement Section 3610 of the \$2.2 trillion CARES Act, which allows federal agencies to use their funds to give contractors sick or paid leave during the pandemic if they are not able to access their worksites or telework. Although the administration advised agencies to “maximize telework” for contractors, that is not possible for many contractor jobs, including some involving sensitive or classified work. Government Executive reporting is available [here](#). Read the full memorandum [here](#).

DOD Will Allow Payments to Contractors Who Can’t Work Due to COVID-19

The DOD issued a [class deviation](#) and [implementation guidance](#) to Section 3610 of the CARES Act that will let agencies reimburse contractors for payment to employees who cannot work because of COVID-19 facility closures or other restrictions. Section 3610 allows agencies to reimburse, at the minimum applicable contract billing rates (not to exceed an average of 40 hours per week), any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of government and contractor personnel, during the public health emergency for COVID-19 through September 30, 2020. The NDIA published an article about the class deviation [here](#).

GSA Class Deviation—Accelerated Payments to Small Business Contractors and Subcontractors

The General Services Administration (GSA) released a class deviation to provide for accelerated payments to contractors that are small businesses and to small business subcontractors by accelerating payments to their prime contractors. The full class deviation is available [here](#).

DOD Accelerates Payments to Small Business Contractors and Subcontractors

The DOD issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to accelerate payments to small business contractors and subcontractors. DOD proposed the rule on May 31, 2019, to implement Section 852 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019. Section 852 provides for accelerated payments to DOD contractors that are small businesses and to small business subcontractors by accelerating payments to their prime contractors. Read the published version [here](#).

DOD Addresses Use of Performance-Based Payments

The DOD issued a final rule amending the DFARS to address the use of performance-based payments. Performance-based payments are tied to the achievement of specific, measurable events or accomplishments that are defined and valued in advance by the parties to the contract. DOD proposed the rule in the Federal Register at 84 FR 18221 on April 30, 2019, to implement Section 831 of the NDAA for FY 2017, which amends 10 U.S.C. § 2307 to address the use of performance-based payments. Read the published version [here](#).

BUSINESS & CORPORATE LAW

Delaware Allows Public Companies to Hold Remote Shareholder Meetings, April 9, 2020, [Melissa Rodriguez](#)

On April 6, 2020, Governor John Carney of the State of Delaware issued the [Tenth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat](#). The initial declaration was issued on March 12, 2020. ***Among other matters relevant as a result of the COVID-19 pandemic, the Declaration touches on a change in shareholder meetings related to publicly traded companies organized in the State of Delaware.*** [\[Read More\]](#)

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- Healthcare
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