

PilieroMazza Weekly Update for Government Contractors and Commercial Businesses

October 2, 2019

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CYBERSECURITY & DATA PRIVACY

Start Preparing Now for DoD's Upcoming Cybersecurity Maturity Model Certification (CMMC), September 27, 2019, [Jon Williams](#) and [Emily Rouleau](#)

For a while now, we have been writing about the increasing impact of cybersecurity on the government contracting world, which, as Jon wrote, has become the “[fourth pillar](#)” of Department of Defense (DoD) acquisitions. The latest evidence of this was discussed by our colleague, [Dave Shafer](#), in his recent [blog](#) discussing a new DoD cybersecurity certification. ***This certification, called Cybersecurity Maturity Model Certification or “CMMC,” will significantly alter the DoD-acquisition landscape next year. Indeed, when this certification requirement comes online, all DoD contractors will be required to have CMMC to bid on, win, and retain new DoD contracts.*** [\[Read More\]](#)

Related Cybersecurity & Data Privacy Presentations by PilieroMazza

PODCAST: *The Whistleblower's Complaint: First-Of-Its-Kind Cybersecurity False Claims Act Settlement* is the third episode of "Ex Rel. Radio," our multi-part series on the False Claims Act, which includes commentary on potential pitfalls for government contractors who may face enforcement issues in light of emerging trends. In this episode, PilieroMazza attorneys [Matt Feinberg](#) and [Dave Shafer](#) join our host, [Jon Williams](#), to discuss a recent cybersecurity FCA case that may have far-reaching implications for government contractors who are subject to federal cybersecurity requirements. [\[Read More\]](#)

LABOR & EMPLOYMENT LAW

Impact of DoL's Changes to FLSA Salary Basis Test on Government Contractors and Commercial Businesses, September 26, 2019, [Nichole Atallah](#)

On September 24, 2019, the Department of Labor (DoL) announced its [final rule](#) to change the Fair Labor Standards Act's (FLSA) salary basis test, which is integral to classifying an employee as exempt from overtime payments. In order to designate an employee as FLSA overtime exempt, an employer must ensure that the employee meets both a salary basis test, which establishes a salary threshold, and a duties test, which establishes the types of responsibilities and knowledge required to be eligible for an exemption. The salary basis requirement is currently \$455 per week, or \$23,660 per year. PilieroMazza previously blogged about the proposed DoL overtime exemption rule [here](#). Effective January 1, 2020, the final rule will increase the threshold amount to \$684 per week or \$35,568 per year, a slight increase from the originally proposed amount. ***Employers, including government contractors, with salaried employees making under \$35,568 annually need to determine if it makes business sense to convert employees to non-exempt status or to raise their salary. Not understanding this requirement could lead to costly DoL violations.*** [\[Read More\]](#)

Senate Confirms Scalia as Labor Secretary

Government Executive reported that the Senate voted 53-44 to confirm Eugene Scalia as Labor secretary. Mr. Scalia is a partner at the law firm Gibson, Dunn & Crutcher and son of the late Supreme Court Justice Antonin Scalia. Read more [here](#).

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WEBINAR: Resolving Onboarding Mistakes That Cause Legal Problems on Federal Contracts, December 11, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

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WEBINAR: Incentive Compensation Plans Designed to Retain Talent and Grow the Business, October 15, 2019, Speaker: [Kathryn Hickey](#). [\[Read More\]](#)

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GOVERNMENT CONTRACTS LAW

DoD Limits Use of LPTA

DoD issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Acts (NDAA) for fiscal years 2017 and 2018 that establish limitations and prohibitions on the use of the “lowest price technically acceptable” (LPTA) source selection process. DoD published a proposed rule in the Federal Register at 83 FR 62550 on December 4, 2018, to implement the limitations and prohibitions on use of the LPTA source-selection process provided in sections 813, 814, and 892 of the NDAA for fiscal year 2017 (Pub. L. 114-328) and sections 822, 832, 882, and 1002 of the NDAA for fiscal year 2018 (Pub. L. 115-91). No changes from the proposed rule are made in the final rule as a result of the public comments received. Read the published version [here](#).

Information on Use of LPTA Process

The Government Accountability Office (GAO) released a report examining the best value, lowest price technically acceptable process of source selection, used by agencies to evaluate proposals received and award a contract competitively. Section 813 of the NDAA for fiscal year 2017, as amended, included limitations on DoD’s use of the LPTA process and required DoD to revise its acquisition regulation to reflect new criteria for use of the LPTA process. Section 880 of the NDAA for fiscal year 2019 required the Federal Acquisition Regulation (FAR) to be updated with similar requirements for civilian agencies. Sections 813 and 880 also included provisions for the GAO to report on the number of instances where the LPTA process was used for contracts exceeding \$5 million. The GAO’s report describes (1) the status of regulatory changes governing the use of the LPTA process; and (2) the extent to which DoD and selected civilian agencies used the LPTA process

to competitively award contracts and orders valued over \$5 million in fiscal year 2018. Read the full report [here](#).

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EVENT: Navigating the FAR/DFARS: The Most Confusing and Little Known Clauses, October 17, 2019, Speakers: [Kathryn Flood](#) and [Emily Rouleau](#). [[Read More](#)]

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SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

Overview, History, and Current Issues of SBA’s 8(a) Program

The Congressional Research Service released a report examining the 8(a) Program’s historical development, key requirements, administrative structures and operations, and the Small Business Administration’s (SBA) oversight of 8(a) firms. It also discusses two SBA programs designed to support 8(a) firms—the 7(j) Management and Technical Assistance Program and the 8(a) Mentor-Protégé Program—and provides various program statistics. Read the full report [here](#).

Agencies Took Longer to Issue Small Business Awards than Recommended

The GAO issued a report after it analyzed agency-provided award data for awards made under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs. Since the SBIR and STTR programs began in 1982 and 1992, respectively, federal agencies have awarded at least 162,000 contracts and grants totaling around \$46 billion to help small businesses develop and commercialize new technologies. Eleven agencies participate in the SBIR program and five of them also participate in the STTR program. Each agency issues a solicitation requesting proposals at least once a year. Agencies then review proposal submissions and issue awards using grants or contracts. The SBIR and STTR policy directive recommends that most agencies issue awards no more than 180 calendar days from solicitation close. The NDAA for fiscal year 2019 included a provision for GAO to report on the timeliness of agencies’ SBIR and STTR proposal review and award issuance. This report examines the time agencies spend issuing SBIR and STTR awards and the factors that affect the time spent, among other things. Read the full report [here](#).

Results of OIG High Risk 7(a) Loan Review

The SBA Office of Inspector General (OIG) released a report examining the High Risk 7(a) Loan Review Program. In fiscal year 2014, the SBA/OIG established the High Risk 7(a) Loan Review Program to minimize losses on SBA guaranteed loans, improve the effectiveness and integrity of the 7(a) program, and protect program dollars.

The SBA/OIG sought to determine whether (1) high-dollar/early-defaulted 7(a) loans were originated and closed in accordance with rules, regulations, policies, and procedures and (2) material deficiencies existed that warrant recovery of guaranteed payments to lenders. The report consolidates the results of SBA's OIG's fiscal year 2019 High Risk 7(a) Loan Review Program. Specifically, it analyzes the results of the loans reviewed from February 2019 through August 2019. Read the full report [here](#).

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