

PilierioMazza Weekly Update for Government Contractors and Commercial Businesses

October 29, 2019

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NATIVE AMERICAN LAW

Emerging Issues in Native 8(a) Contracting

The House Committee on Small Business, Subcommittee on Investigations, Oversight, and Regulations held a hearing titled, “Native 8(a) Contracting: Emerging Issues.” Recognizing the positive impact that the Small Business Administration’s (SBA) 8(a) program could have on tribal communities living in devastating poverty with little to no economic opportunity, Congress created the exceptions in the law for enterprises owned communally by tribes, Alaska Native Corporations (ANC) and Native Hawaiian Organizations—community-based organizations required to provide social, economic, and cultural benefits to their Native owners in perpetuity. The hearing assessed the past, present, and future issues surrounding the program to ensure it is operating in accordance with Congressional intent. Read the testimony transcripts and watch the hearing [here](#).

Weaknesses in SBA Oversight of Tribal 8(a) Firms

The Government Accountability Office (GAO) released a report titled, “Small Business Administration: Steps Taken on Long-Standing Weaknesses in SBA’s Oversight of Tribal 8(a) Firms, but Additional Action Needed.” SBA’s 8(a) program provides business development support to small, disadvantaged businesses—including firms owned by ANCs. GAO previously reviewed participation by ANC-owned firms in this program and testified about a number of issues identified between 2006 and 2016 regarding how SBA monitors and oversees these firms. SBA has not addressed these GAO recommendations, including tracking and sharing ANC-related information across SBA regional offices, considering the establishment of criteria thresholds for contract modifications, and developing policies to consistently assess whether other small businesses are losing 8(a) contracts to ANC-owned firms. GAO continues to believe that implementing these recommendations would enhance SBA’s oversight and monitoring of firms in the 8(a) program. Read the full report [here](#).

GOVERNMENT CONTRACTS LAW

DoD Update on Acquisition Policy Reform Goals and Sustainment Efforts

The Department of Defense’s (DoD) Undersecretary of Defense for Acquisition and Sustainment, Ellen M. Lord, gave a press briefing that provides updates on the department’s acquisition reform and innovation efforts. The press briefing discusses the future of acquisition policy, six strategic goals for the acquisition community, and reform efforts to support the National Defense Strategy. Read the transcript of the briefing [here](#).

Small Business Mentor-Protégé Programs Report

The Congressional Research Service (CRS) released a report titled, “Small Business Mentor-Protégé Programs.” The federal government currently has several mentor-protégé programs to assist small businesses in various ways. SBA noted in its final rule on July 25, 2016, that because the new All Small Business Mentor-Protégé Program applies to all federal small business contracts and federal agencies, “conceivably other agency specific mentor-protégé programs would not be needed.” Since then, several federal agencies have ended their

mentor-protégé programs and encouraged interested parties to consider SBA's All Small Business Mentor-Protégé Program. This report provides an overview of the federal government's various small business mentor-protégé programs, which differ in their scope and operations. The full report is available [here](#).

Defense Contractors Profit from Increase to Secret Pentagon Spending

Government Executive reports that the share of Pentagon spending hidden from public view is rising, as are defense contractors' revenues from it. According to the article, which relied on information from Avascent, a consulting firm, DoD's overall budget request increased nearly 5 percent from 2019 to 2020, and classified spending rose 6 percent. Classified spending accounts for about \$76 billion, or almost 11%, of the \$718 billion requested for the current fiscal year. Despite the classified nature of aircraft, space, and missile projects, Government Executive reports that the leaders of America's largest defense firms talk about classified spending in annual reports, regulatory filings, and quarterly earning calls, and often identify the specific business units receiving funding. For example, Raytheon's 2018 [annual report](#) touted "record classified bookings of nearly \$7 billion"—up 46 percent in just a year and representing 19 percent of the company's total revenues. Read more [here](#).

Related Government Contracts Law Presentations by PilieroMazza

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WEBINAR: Labor and Employment for Government Contractors—Yes, There Is a Difference! November 12, 2019, Speaker: [Nichole Atallah](#). [\[Read More\]](#)

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Top Legal Questions from Government Contractors, November 21, 2019, Speaker: [Tony Franco](#). [\[Read More\]](#)

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

CYBERSECURITY & DATA PRIVACY

SBA Seeks Small & Mid-Sized Business Participants for Cybersecurity Survey

SBA is working with the DHS and the Information Technology Coordinating Council (ITCC) to attract respondents to [a confidential cybersecurity survey for small and mid-sized businesses](#). DHS' Cybersecurity & Infrastructure Security Agency and the ITCC are the primary agencies coordinating this survey with assistance from SBA and its Office of Advocacy. Read more [here](#).

Related Cybersecurity & Data Privacy Presentations by PilieroMazza

WEBINAR: The State of Affairs for Data Privacy—Trends in State Legislation and What They Mean, November 19, 2019, Speakers: [Dave Shafer](#) and [Emily Rouleau](#). [\[Read More\]](#)

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

Report on Congressional Action to Increase Small Businesses Access to Capital

CRS released a report titled “Small Business Administration 504/CDC Loan Guaranty Program.” SBA administers programs to support small businesses, including several loan guaranty programs designed to encourage lenders to provide loans to small businesses “that might not otherwise obtain financing on reasonable terms and conditions.” SBA’s 504 Certified Development Company (504/CDC) loan guaranty program is administered through nonprofit Certified Development Companies (CDC). It provides long-term fixed rate financing for major fixed assets, such as land, buildings, equipment, and machinery. Of the total project costs, a third-party lender must provide at least 50% of the financing, the CDC provides up to 40% of the financing through a 100% SBA-guaranteed debenture, and the applicant provides at least 10% of the financing. Its name is derived from Section 504 of the Small Business Investment Act of 1958 (P.L. 85-699, as amended), which provides the most recent authorization for SBA’s sale of 504/CDC debentures. In fiscal year 2019, SBA approved 6,099 504/CDC loans amounting to nearly \$5 billion. Read the full report [here](#).

Report on the Small Business Lending Fund

CRS released a report titled “The Small Business Lending Fund.” It opens with a discussion of the supply and demand for small business loans. The report then examines arguments presented both for and against the program. Advocates argued that the SBLF would increase lending to small businesses and, in turn, create jobs. Opponents contended that the SBLF could lose money, lacked sufficient oversight provisions, did not require lenders to increase their lending to small businesses, could serve as a vehicle for Troubled Asset Relief Program (TARP) recipients to effectively refinance their TARP loans on more favorable terms with little or no resulting benefit for small businesses, and could encourage a failing lender to make even riskier loans to avoid higher dividend payments. The report concludes with an examination of the program’s implementation and a discussion of bills introduced to amend the SBLF. Read more [here](#).

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