



## Pilieromazza Weekly Update for Government Contractors and Commercial Businesses

December 11, 2019

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### **CLIENT ALERT: SBA to Enact Significant Changes to Small Business Regulations Before 2020: Everything You Need to Know**, December 3, 2019, [Sam Finnerty](#)

On November 29, 2019, the U.S. Small Business Administration (SBA) issued a [final rule](#) that will implement several provisions of the National Defense Authorization Acts (NDAA) of 2016 and 2017 and the Recovery Improvements for Small Entities After Disaster Act of 2015, as well as other clarifying amendments. As we [outlined](#) nearly a year ago when the rule was first proposed, *these changes address key small business issues for government contractors, including: subcontracting plans, the non-manufacturer rule, Information Technology Value Added Reseller procurements, limitations on subcontracting, recertification, size determinations, and the ostensible subcontractor rule.* Below, we summarize fundamental revisions, which take effect on December 30, 2019. [\[Read More\]](#)

### **CLIENT ALERT: Effective January 6, 2020: SBA Adopts Five-Year Receipts Calculation**, December 5, 2019, [Megan Connor](#) and [Anna Wright](#)

Effective January 6, 2020, SBA will change the period of measurement for receipts-based size calculations from three years to five years. This change is the result of the Small Business Runway Extension Act of 2018 and SBA's [final rulemaking](#) on December 5, 2019. *This is a long-awaited change and will have far-reaching impacts for government contractors.* [\[Read More\]](#)

### **RECORDING: PilieroMazza Breakfast Seminar: SBA Proposes Rule Changes to 8(a) and Mentor-Protégé Programs**

To gain access to the recording of [Pilieromazza's](#) November 18th Breakfast Seminar "SBA Proposed Rule Changes to 8(a) and Mentor-Protégé Programs" with SBA's [John Klein](#) and PilieroMazza's [Pam Mazza](#), please register [here](#). Once we receive your payment, a code will be sent to your email address with a link to the recording. *We kindly ask that you refrain from distributing this information outside of your organization.* We trust you will find the program useful as you navigate how SBA's proposed rules may impact the way you bid for, win, and retain government contracts. Please contact [marketing@pilieromazza.com](mailto:marketing@pilieromazza.com) if you have any issues. [\[Read More\]](#)

## **LABOR & EMPLOYMENT LAW**

### **OFCCP Releases Technical Assistance Guide for Construction Contractors**, December 4, 2019, [Sara Nasser](#)

In keeping with its commitment to offer more technical guidance for government contractors across all industries, the Office of Federal Contract Compliance Programs (OFCCP) recently published its Technical Assistance Guide for construction contractors. *The OFCCP released the guide as a self-assessment tool to help contractors review the equal employment opportunity practices they have in place. Using this tool, and*

***fixing issues it might reveal, may help construction contractors avoid potential investigation and interruption to their business operations.*** For a full copy of the guide, please visit OFCCP's website [here](#). [\[Read More\]](#)

### **DoL's OIG Releases Semiannual Report to Congress**

The Department of Labor's (DoL) Office of Inspector General (OIG) released its Semiannual Report to Congress. During the six-month reporting period ending September 30, 2019, the OIG issued 11 audits and other reports with 39 recommendations for corrective action. These reports identified \$13 million in funds that could be put to better use. Additionally, OIG's investigative work yielded impressive results, with a total of 149 indictments, 125 convictions, and \$65 million in monetary accomplishments. This report also details DoL's significant concerns, strategic goals, audits, and various programs. Read the full report [here](#).

### **Related Labor & Employment Law Presentations by PilieroMazza**

**WEBINAR: Sex Discrimination: New Court Rulings and Legislative Updates on Gender Identity and the Practical Impact on LGBTQ Employees**, January 8, 2020, Speaker: [Sara Nasser](#). [\[Read More\]](#)

### **GOVERNMENT CONTRACTS LAW**

**No More "Consent to Subcontract" for 8(a) Firms**, December 3, 2019, [Tony Franco](#)

Firms that participate in the SBA 8(a) program operate in a highly regulated environment. For years, 8(a) firms were required to seek approval, or "consent to subcontract," from contracting officers and SBA to subcontract work on an 8(a) contract. In September, with little fanfare, the Federal Acquisition Regulatory Council removed the consent-to-subcontract requirement from two Federal Acquisition Regulation (FAR) clauses (FAR 52.219-12 and 52.219-17), which are supposed to be incorporated in all 8(a) contracts. According to the council, this was done after SBA removed the rarely enforced requirement from its regulations. The final regulations took effect in October. ***The removal of the consent-to-subcontract requirement is welcome news for 8(a) firms, who faced exposure to adverse contractual remedies if accused of violating the requirement.*** [\[Read More\]](#)

### **Updates to Operational and Organizational Requirements for CDCs**

SBA issued a final rule streamlining and updating the operational and organizational requirements for Certified Development Companies (CDCs) to improve efficiencies and reduce costs without unduly increasing risk in the 504 Loan Program. The changes include streamlining the requirements that apply to the corporate governance of CDCs, and updating the requirements that apply to professional services contracts entered into by CDCs, the requirements related to the audit and review of a CDC's financial statements, and the requirements related to the balance that a Premier Certified Lender Program CDC must maintain in its Loan Loss Reserve Fund. Read the published version [here](#).

### **DOE Modifies Class Deviation Reporting Thresholds for CPARS**

The Department of Energy (DOE) modified the class deviation reporting thresholds for Contractor Performance Assessment Reporting System (CPARS) evaluations. FAR policy generally requires that agencies evaluate contractor performance on all contracts and orders that exceed the simplified acquisition threshold (SAT). While the SAT itself is statutory, the linkage of CPARS reporting to the SAT was a regulatory policy decision; as such, deviations are permissible, in accordance with FAR subpart 1.4. To increase efficiencies throughout DOE, this class deviation increases the CPARS reporting threshold in FAR 42.1502(b), (c), and (d) to \$1 million for other than small business contracts. Contracts with small business concerns are exempted from this deviation; this will allow such entities to continue generating past performance information, better positioning them for future business opportunities. Also excluded from this deviation are construction contracts and architect-engineer contracts; those CPARS thresholds remain at \$700,000 and \$35,000 respectively, consistent with the FAR. This deviation may be implemented in both new and existing DOE contracts. Read more [here](#).

### **GSA's OIG Releases Semiannual Report to Congress**

The GSA OIG semiannual report contained a summary of the agency's contract audit reports, its FAR Disclosure Program for government contractors, and a summary of the GSA OIG investigations and inspections. Inspector General Carol Ochoa noted that GSA's audit and investigative work identified \$219 million in potential cost savings and recovered \$122 million for the federal government during Fiscal Year 2019. She also cited important GSA investigative efforts that bolstered the integrity of federal government acquisitions by achieving significant recoveries from contractors who have defrauded or otherwise overcharged the United States. Read the full report [here](#).

### **SBA's OIG Releases Semiannual Report to Congress**

The SBA OIG semiannual report provided an OIG review of various SBA programs, from loan programs meant to provide small business access to capital to disaster assistance programs and procurement assistance. It also detailed SBA's successes and identified weaknesses that SBA should address. Inspector General Hannibal Ware noted that, from April 1 to September 30, 2019, SBA's OIG issued 14 reports with 64 recommendations to improve SBA operations and reduce fraud and unnecessary losses in SBA programs. The OIG also achieved monetary recoveries and savings of more than \$71 million in that time through its investigations and auditing efforts. Read the full report [here](#).

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

### **House of Representatives Updates SBA Programs**

The Committee on Small Business reported that the House of Representatives passed five bills that updated several SBA programs in order to enhance entrepreneurial opportunities for military veterans including:

- [HR 1615](#), "Verification Alignment and Service-Disabled Business Adjustment Act," which reduces confusion around federal procurement requirements for service-disabled veteran-owned small businesses (SDVOSB) and veteran-owned small businesses (VOSB) by clarifying agency responsibility around a business' status and eligibility for set-aside contracts. Specifically, the bill transfers the responsibility of maintaining a database of fully certified SDVOSBs and VOSBs from the Department of Veterans Affairs (VA) to SBA. It also clarifies that the VA is responsible for verifying the individual business owner's status as a veteran or service-disabled veteran, and SBA is responsible for determining the business concern's status as a small business concern.
- [HR 499](#), "Service-Disabled Veterans Small Business Continuation Act," amends language in the 2017 NDAA to clarify that surviving spouses will remain eligible for the contracting certification of a SDVOSB upon the death of the disabled service member as long as specific requirements are met.

HR 1615 and HR 499, among others, now go to the Senate for consideration. Read more [here](#).

### **SBA Tribal Consultation Meetings on Proposed Revisions to 8(a) Regulations**

SBA announced that it will hold tribal consultation meetings in Minneapolis, Minnesota; Anchorage, Alaska; Albuquerque, New Mexico; and Oklahoma City, Oklahoma concerning the proposed revisions to the 8(a) Business Development (BD) program regulations. Testimony presented at these tribal consultations will become part of the administrative record for SBA's consideration when it deliberates on approaches to changes in the regulations pertaining to the 8(a) BD program.

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**Upcoming SBA Consultation Meetings**

**Wednesday, January 8, 2020, 10:00 a.m. to 4:00 p.m. (AKST)**

**The pre-registration deadline for this Tribal Consultation meeting is January 2, 2020.**

Z.J. Loussac Public Library  
3600 Denali Street  
Anchorage, AK 99503

**Tuesday, January 14, 2020, 10:00 a.m. to 2:00 p.m. (MST)**

**The pre-registration deadline for this Tribal Consultation meeting is January 7, 2020.**

Indian Pueblo Cultural Center  
2401 12th Street NW  
Albuquerque, NM 87104

**Thursday, January 16, 2020, 10:00 a.m. to 2:00 p.m. (CST)**

**The pre-registration deadline for this Tribal Consultation meeting is January 9, 2020.**

Francis Tuttle Technology Center  
Corporate Training Center Building  
12777 North Rockwell Avenue  
Oklahoma City, OK 73142

Pre-registration requests to attend and/or testify can be sent to Chequita Carter of SBA's Office of Native American Affairs, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416; [Chequita.Carter@sba.gov](mailto:Chequita.Carter@sba.gov); or Facsimile to (202) 481-2177. For information on filing comments, 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:

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- [False Claims Act](#)
- [Government Contracts Claims and Appeals](#)
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