



## Pilieromazza Weekly Update for Government Contractors and Commercial Businesses

December 23, 2019

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### **SEASON'S GREETINGS FROM PILIEROMAZZA!**

**CLIENT ALERT: The 2020 NDAA's Impact on Government Contractors**, December 19, 2019, [Megan Connor](#)  
On December 17, 2019, the Senate passed the National Defense Authorization Act (NDAA) for Fiscal Year 2020, sending it to the White House for the President's signature. As with prior NDAA's, ***the 2020 NDAA includes a number of provisions that affect procurement policy, management, and related matters. We summarize some of the more notable provisions that will impact government contractors.*** [\[Read More\]](#)

**ANNOUNCEMENT: PilieroMazza Welcomes Melissa Rodriguez to Business & Corporate Group**, December 18, 2019

[Pilieromazza](#) is pleased to announce that [Melissa Rodriguez](#) has joined the Firm as an Associate in its [Business & Corporate Group](#). Ms. Rodriguez focuses her practice on international transactions involving corporate entities located in the United States, Latin America, and the Caribbean. *"Melissa's legal knowledge, combined with her deep understanding of what's important to business owners and their management teams, makes her a great addition to our corporate/M&A team,"* said the Group's Practice Chair [Kathryn Hickey](#). [\[Read More\]](#)

**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 the Small Business Administration's (SBA) [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. [\[Read More\]](#)

### **CYBERSECURITY & DATA PRIVACY**

**Cybersecurity Maturity Model Certification (CMMC): The Final Countdown**, December 18, 2019, [Anna Wright](#) and [David Shafer](#)

[Pilieromazza](#) recently [wrote](#) about the Department of Defense's (DoD) release of revision (rev.) 0.6 of its Cybersecurity Maturity Model Certification (CMMC), which only addressed certification Levels 1–3. DoD has now released rev. 0.7. ***All DoD contractors will be required to obtain CMMC certification in the coming months to show their IT systems' capabilities with respect to protecting DoD sensitive information. Rev. 0.7 gives updates at all Levels.*** Additionally, rev. 0.7 contains new discussion and clarifications for Levels 1–3

and for the application of maturity levels to different capability domains. Below, we decipher primary concerns for DoD contractors. [[Read More](#)]

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

**SBA to Increase Enforcement in 2020 on Set-Asides and Subcontracting**, December 13, 2019, [Jon Williams](#)

One of the most overlooked compliance requirements for set-aside contracts are the limitations on subcontracting. Don't take my word for it—the Government Accountability Office (GAO) has noted in several reports that contracting officers generally do not monitor or enforce the requirement that the small business prime contractor must self-perform a certain percentage of the contract. The limitations on subcontracting requirements are critical to the efficacy of the small business programs. Indeed, the goals of the programs are not served if small businesses do not perform contracts reserved explicitly for them. ***With enforcement a significant focus for SBA starting in 2020, government contractors large and small need to make a New Year's resolution to adjust or implement compliance strategies to ensure they understand and satisfy the limitations on subcontracting and set-aside projects.*** [[Read More](#)]

### **LABOR & EMPLOYMENT LAW / LITIGATION & DISPUTE RESOLUTION**

**Liquidated Damages Clauses: Important Considerations for Business Owners**, December 16, 2019, [Patrick Burns](#)

When drafting or negotiating any contract, businesses should give careful consideration to avenues of recovery in the event of a breach by the other party. At times, this determination is straightforward, such as where a party fails to pay amounts owed. But the analysis can become complicated in situations where damages aren't readily quantifiable, such as where a trade secret is misappropriated or a former employee solicits a company client. To simplify such issues, businesses include liquidated damages provisions in their agreements. The clauses provide for the payment of a stipulated amount of money if the agreement is breached. ***While commonplace, legal enforceability of such provisions is often overlooked by many business owners. Depending on the nature of the agreement, a liquidated damages clause may be worth considering, but is not always appropriate. Due to the many complexities involved, legal counsel is recommended to provide guidance on these issues.*** [[Read More](#)]

### **Updates to Calculation of Overtime Compensation**

The Department of Labor's Wage and Hour Division issued a final rule updating a number of regulations on the calculations of overtime compensation both to provide clarity and to better reflect the 21<sup>st</sup>-century workplace. The Fair Labor Standards Act (FLSA) generally requires that covered, non-exempt employees receive overtime pay of at least one and one-half times their regular rate of pay for time worked in excess of 40 hours per workweek. The regular rate includes all remuneration for employment, subject to the exclusions outlined in section 7(e) of the FLSA. The changes in this final rule will promote compliance with the FLSA, provide appropriate and updated guidance in an area of evolving law and practice, and encourage employers to provide additional and innovative benefits to workers without fear of costly litigation. This final rule will be effective on January 15, 2020. Read the published version [here](#).

### **NLRB Protects Freedom of Association, Self-Organization, and Representative Designation for Negotiating Terms and Conditions of Employment**

The NLRB issued a final rule to carry out provisions of the National Labor Relations Act that protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. While retaining the essentials of existing representation case procedures, these amendments modify them to permit parties additional time to comply with various pre-election requirements

instituted in 2015, to clarify and reinstate some procedures that better ensure the opportunity for litigation and resolution of unit scope and voter eligibility issues prior to an election, and to make several other changes the board deems to be appropriate policy choices that better balance the interest in the expeditious processing of questions of representation with the efficient, fair, and accurate resolution of questions of representation. The final rule is effective April 16, 2020. Read the published version [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**

**Performance Anxiety: Five Questions from Government Contractors on Past Performance**, December 13, 2019, [Kathryn Flood](#) and [Sam Finnerty](#)

A government contractor's past performance can spell the difference between proposal rejection and contract award, and agencies are given broad discretion in how they evaluate past performance. *It is critical that companies working with the federal government understand not only what steps they should take to utilize and cultivate positive past performance, but also the steps they should take to defend it.* We recently gave a webinar on these topics and received several follow-up questions. This post addresses our top five listener questions. [\[Read More\]](#)

### **FAR Prohibition on Contracting for Certain Telecommunications and Video**

DoD, the General Services Administration (GSA), and the National Aeronautics and Space Administration issued a second interim rule amending the Federal Acquisition Regulation (FAR) to require offerors to represent annually whether they offer equipment, systems, or services to the government that include covered telecommunications equipment or services. These provisions implement section 889(a)(1)(A) of the NDAA for Fiscal Year 2019. Read the published version [here](#). A summary presentation of the interim rule is available [here](#), and a small entity compliance guide for the rule is available [here](#).

### **Defense Acquisition Briefing from Under Secretary of Defense for Acquisition & Sustainment**

Under Secretary of Defense for Acquisition & Sustainment Ellen Lord gave a press briefing on defense acquisition. At the briefing, she provided an update on several notable engagements she supported; she spoke about 2019's significant acquisition reform achievements; and she introduced her goals for 2020. Under Secretary Lord discussed the reduction of Defense Federal Acquisition Regulation Supplement (DFARS) clauses, the reduction in DFARS publication backlog, and a reduction in procurement, administrative lead time, among many other topics. She also touched upon the CMMC, which DoD is moving forward with, using 3,000 public comments to help tailor the final model. Under Secretary Lord stated the CMMC framework would be fully available in January 2020 and would be included in requests for information by June 2020. Her statement can be read [here](#).

### **GAO REPORT: Cloud Computing Security: Agencies Increased Use of Federal Authorization Program, but Improved Oversight and Implementation Are Needed**

GAO issued a report after it was asked to review the Federal Risk and Authorization Management Program (FedRAMP) to determine the extent to which 1) federal agencies used FedRAMP to authorize cloud services, 2) selected agencies addressed key elements of the program's authorization process, and 3) program participants identified FedRAMP benefits and challenges. The GSA manages FedRAMP, which provides a standardized approach to ensure that cloud services meet federal security requirements. The Office of Management and

Budget (OMB) requires agencies to use FedRAMP to authorize the use of cloud services. GAO found that from June 2017 to July 2019, the number of authorizations granted through FedRAMP increased 137%, but agencies reported that they did not always use FedRAMP for authorizing cloud services. Although OMB required agencies to use FedRAMP, GAO found that OMB did not effectively monitor agencies' compliance with this requirement. Read more [here](#).

### **GSA Contracting Officer Pleads Guilty to Federal Bribery Charge**

The U.S. Attorney's Office for the District of Columbia announced that Ronnie Simpkins, a former government contracting officer with GSA, pled guilty to a federal bribery charge stemming from a scheme in which he accepted bribes from government contractors from August 2011 to August 2017. According to the government's evidence, from 1989 until May 2019, Simpkins was employed by GSA as a Contract Specialist, informally known as a Contracting Officer, in procurement related positions, and between August 2013 and May 2019, he worked as a Contract Specialist assigned to GSA's headquarters in Washington, D.C. 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:

- [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](#)
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