

PilieroMazza Weekly Update for Government Contractors and Commercial Businesses

August 26, 2019

If you have questions concerning the content below, please visit this [link](#).

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

GAO Defers to SBA on When Runway Extension Act Applies, August 20, 2019, [Emily Rouleau](#)

Last year, Congress passed—and President Trump signed—the Small Business Runway Extension Act (the "Runway Extension Act" or the "Act"), which changed the time period for determining a company's size based on average annual receipts from the previous three years to the previous five years. This summer, the Small Business Administration ("SBA") published its proposed rule to amend its regulations and change the period of measurement for receipts-based size calculations from three years to five years. The SBA was slow to implement the change imposed by the Runway Extension Act because it believes the law amended a section of the Small Business Act that does not apply to SBA. Now, the Government Accountability Office ("GAO") has deferred to SBA's interpretation, days before comments to SBA's proposed rule was due. ***While GAO's decision may signal that offerors may need to continue to calculate their average annual receipts based on the previous three year, this is an open and developing issue, especially until SBA finalizes a rule implementing the Runway Extension Act.*** [\[Read More\]](#)

Related Small Business Programs & Advisory Services Presentations by PilieroMazza

EVENT: Top 10 Corporate Mistakes that Small Businesses Make in Federal Contracting, September 19, 2019, Speakers: [Isaias "Cy" Alba](#) and [Kathryn Hickey](#). [\[Read More\]](#)

EVENT: Growth Through Joint Ventures and Mentor-Protégé Relationships, November 6, 2019, Speakers: [Peter Ford](#) and [Meghan Leemon](#). [\[Read More\]](#)

FALSE CLAIMS ACT

Department of Justice -- The DOJ announced that Luke Hillier, a majority owner and former Chief Executive Officer of Virginia-based defense contractor ADS, Inc., agreed to pay the United States \$20 million to settle allegations that he violated the False Claims Act by fraudulently obtaining federal set-aside contracts reserved for small businesses that his company was ineligible to receive. The government alleged that Hillier caused ADS to falsely represent that it qualified as a small business concern when it failed to do so, including due to its alleged affiliations with a number of other entities. The government further alleged that, as a result of Hillier's representations, his company was awarded numerous small business set-aside contracts for which it was ineligible. Read more [here](#).

The DOJ also [announced](#) that Sunrise Systems of Brevard, Inc. (Sunrise) has agreed to pay the United States \$500,000 to resolve allegations that it violated the False Claims Act by submitting claims for government funds in violation of SBA regulations. According to the DOJ's announcement, from December 10, 2013, through February 9, 2016, Sunrise partnered with a minority-owned small business, V&R Enterprises of Jacksonville,

Inc., but violated the SBA's labor and work performance requirements in order to access SBA set-aside funds. The government alleged that Sunrise performed nearly all of the work on the joint venture project and received nearly all of the profits, in violation of the law.

Related False Claims Act Presentations by PilieroMazza

PODCAST: PilieroMazza's *GovCon Live!* presents "Ex Rel. Radio," our multi-part series on the False Claims Act, which will include commentary on potential pitfalls for your company, enforcement issues, and emerging trends. Check out our next episode "Building Compliance: Construction Industry Concerns Under FCA" with [Sarah Nash](#) and [Jon Williams](#), which went live the week of August 19th. [[Read More](#)]

LABOR & EMPLOYMENT LAW

The Big Miss: When Job Misclassification Strikes Hard, August 23, 2019, [Nichole Atallah](#)

Everywhere you look companies are being hit hard with claims of misclassification of workers under labor regulations. So far in August 2019, Department of Labor (DOL) has announced over \$2 Million in damages paid to employees, and this doesn't even include voluntary settlements handled outside of DOL. In fact, General Dynamics was recently hit with a \$170,000 settlement regarding claims that the company misclassified call center workers under the Service Contract Act (SCA). ***To avoid such penalties and to remain legally compliant, employers—including government contractors—should seek experienced legal counsel to help them properly classify a position, as well as create a system for future classifications.*** [[Read More](#)]

Department of Labor – The DOL's Office of Federal Contract Compliance Programs (OFCCP) entered into a conciliation agreement with Conduent Commercial Services LLC—formerly CSG Xerox World—by which the federal contractor agreed to pay \$175,000 in back wages to resolve claims of systematic hiring discrimination at its Portland, Oregon facility. Specifically, OFCCP alleged that in 2012, Conduent discriminated against 1,121 female, African American and Asian applicants in the customer care assistant position. OFCCP determined that the company's hiring practices violated Executive Order 11246, which prohibits federal contractors from discriminating in employment based on race, color, religion, sex, sexual orientation, gender identification, or national origin. Read more [here](#).

The DOL also [announced](#) that Xperts Inc.—a San Juan, Puerto Rico disaster-response contractor—paid \$1,341,829 in back wages to 1,853 employees to resolve violations of the McNamara-O'Hara Service Contract Act (SCA), the Contract Work Hours and Safety Standards Act, and the Fair Labor Standards Act. Investigators determined that the contractor violated the SCA when it failed to pay employees the full amount of the prevailing wages, fringe benefits, and holidays required by law under its federal contract.

Related Labor & Employment Law Presentations by PilieroMazza

PODCAST: PilieroMazza's *GovCon Live!* presents "Ex Rel. Radio," our multi-part series on the False Claims Act, which will include commentary on potential pitfalls for your company, enforcement issues, and emerging trends. Check out our next episode "Building Compliance: Construction Industry Concerns Under FCA" with [Sarah Nash](#) and [Jon Williams](#), which went live the week of August 19th. [[Read More](#)]

EVENT: Clearing a DOL Audit, September 25, 2019, Speakers: [Nichole Atallah](#) and [Sarah Nash](#). [[Read More](#)]

CYBERSECURITY & DATA PRIVACY

Prepare Now to Secure "Controlled Unclassified Information", August 21, 2019, [Emily Rouleau](#)

Nowadays, many people are familiar with at least some types of protected information, whether in the form of personal health information or government-classified information. But, contractors working with the Department of Defense must remember to protect another type of information: controlled unclassified information. ***Failure by government contractors to put processes in place that protect CUI could result in the loss of contracting opportunities or potential False Claims Act-related litigation.*** [\[Read More\]](#)

Department of Justice – The DOJ announced that ManTech Advances Systems International, Inc. (ManTech), a federal government contractor, agreed to pay \$750,000 to settle civil fraud allegations that it falsely represented that its principal manager of a contract for security services at the U.S. Environmental Protection Agency (EPA) had a Top Secret clearance. According to the DOJ's announcement, ManTech was awarded a subcontract on an EPA contract that required that certain tasks be performed only by individuals with a Top Secret clearance. ManTech represented that the principal project manager for the contract, and one of the individuals who would be performing those tasks, had the required Top Secret clearance. The government alleged that when the project manager's clearance was revoked, ManTech failed to inform EPA of the loss of the manager's clearance. Read more [here](#).

BUSINESS & CORPORATE LAW

Related Business & Corporate Law Presentations by PilieroMazza

EVENT: Legal and Practical Perspectives on Mergers & Acquisitions, September 5, 2019, Speakers: [Jon Williams](#) and [Kathryn Hickey](#). [\[Read More\]](#)

WEBINAR: Top 10 Corporate Mistakes that Small Businesses Make in Federal Contracting, September 19, 2019, Speakers: [Isaias "Cy" Alba](#) and [Kathryn Hickey](#). [\[Read More\]](#)

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

GOVERNMENT CONTRACTS LAW

Department of Defense, General Services Administration, and National Aeronautics and Space Administration – The DoD, GSA, and NASA issued a proposed rule proposing to amend the Federal Acquisition Regulation to permit the issuance of task or delivery orders via fax or electronic commerce. Comments to the proposed rule are due October 22, 2019. The published version of the proposed rule can be found [here](#).

Department of Defense -- The DoD issued a class deviation regarding performance-based payments. Effective as of August 20, 2019, when issuing a solicitation that may result in a contract providing for performance-based payments or awarding a fixed-price contract under which the government will provide performance-based payments, contracting officers shall deviate from the policy at Defense Federal Acquisition Regulation Supplement (DFARS) 232.1001(a) and the clause prescriptions at DFARS 232.1005-70 and use DFARS 252.232-7012 or 252.232-7013. The full version can be found [here](#).

Related Government Contracts Law Presentations by PilieroMazza

EVENT: Forming CTAs on GSA Schedules, September 5, 2019, Speaker: [Katie Flood](#). [[Read More](#)]

EVENT: Legal and Practical Perspectives on Mergers & Acquisitions, September 5, 2019, Speakers: [Jon Williams](#) and [Kathryn Hickey](#). [[Read More](#)]

WEBINAR: Top 10 Corporate Mistakes that Small Businesses Make in Federal Contracting, September 19, 2019, Speakers: [Isaias “Cy” Alba](#) and [Kathryn Hickey](#). [[Read More](#)]

WEBINAR: Subcontract Pricing, September 24, 2019, Speaker: [Isaias “Cy” Alba](#). [[Read More](#)]

EVENT: Growth Through Joint Ventures and Mentor-Protégé Relationships, November 6, 2019, Speakers: [Peter Ford](#) and [Meghan Leemon](#). [[Read More](#)]

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 Law](#)
- [Intellectual Property & Technology Rights](#)
- [Labor & Employment Law](#)
- [Litigation & Dispute Resolution](#)
- [Mergers & Acquisitions](#)
- [Native American Law](#)
- [Private Equity and Venture Capital](#)
- [Small Business Programs & Advisory Services](#)

Visit us at www.PilieroMazza.com.

###

Disclaimer

This communication does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader. If you require legal guidance in any specific situation, you should engage a qualified lawyer for that purpose. Prior results do not guarantee a similar outcome.

Attorney Advertising

It is possible that under the laws, rules, or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.