

PiliroMazza Weekly Update for Government Contractors and Commercial Businesses

July 23, 2019

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SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

CLIENT ALERT: SBA to Increase Size Standards with Inflationary Adjustment, July 17, 2019, [Megan Connor](#)

On July 18, 2019, SBA issued an interim final rule increasing the receipts-based size standards for inflation. An unpublished version of the rule is available [here](#). The change should be effective August 17, 2019, 30 days after the scheduled publication of the rulemaking. Comments to the rule are due September 16, 2019. ***For government contractors whose status changes in the System for Award Management ("SAM") from "other than small" to "small," as a result of the inflation adjustment, SBA advises that the business update their SAM profile and complete the "representations and certifications" section of SAM. Doing so will provide a more competitive environment for government contractors whose status changes to a "small business."*** [\[Read More\]](#) The text of SBA's interim final rule can be found [here](#). 84 Fed. Reg. No. 138, 34261

WEBINAR: SBA's Mentor-Protégé Program: How 8(a) Firms Can Grow, Gain Experience, and Win Contracts, July 24, 2019, Speaker, [Jonathan Williams](#). [\[Read More\]](#)

EVENT: Forming CTAs on GSA Schedules, September 4, 2019, Speaker, [Katie Flood](#). [\[Read More\]](#)

EVENT: Mergers and Acquisitions, September 5, 2019, Speakers, [Jonathan Williams](#) and [Kathryn Hickey](#). [\[Read More\]](#)

LABOR & EMPLOYMENT LAW

CLIENT ALERT: EEOC Announces New EEO-1 Pay Data Reporting Deadline, July 18, 2019, [Sarah Nash](#)
September 30, 2019 marks the newly announced deadline for employers who submit annual EEO-1 reports to report employee 2018 pay data to the Equal Employment Opportunity Commission (EEOC). The EEOC revealed the new deadline in a federal court submission last week. **UPDATE:** Since the [original blog](#) on this topic was published, the court issued an order confirming the September 30, 2019 deadline, and requiring the EEOC to collect a second year of data in addition to the 2018 pay information. The EEOC has also since announced its decision to collect 2017 pay data which will also be due this September. ***Employers (government contractors and commercial businesses) should work with an experienced labor and employment attorney to ensure they comply before the September 30, 2019 deadline.*** [\[Read More\]](#)

FALSE CLAIMS ACT / LITIGATION

Cybersecurity, Implied Certifications, and the False Claims Act, July 22, 2019, [Isaias Alba](#)

As I am sure many of you know and have read about already, the first False Claims Act ("FCA") case, US Ex rel. Markus v. AeroJet Rocketdyne Holdings, Inc., et al., No. 2:15-cv-2245, has been filed in the Eastern District of California by a disgruntled former Director of Cyber Security Compliance and Controls, and it survived a motion to dismiss in May of this year. When the existence of the AeroJet case is layered over the U.S. Supreme Court's findings in Universal Health Servs., Inc. v. US Ex rel. Escobar, 136 S.Ct. 1989 (2016), which confirmed FCA liability based upon implied certifications, a worrisome result can occur. Namely, can the disgruntled employees, aggrieved subcontractors, consultants who see an opening for a quick buck, spouses in the midst of a contentious divorce, or any other random individual with a basic knowledge of your IT systems file an FCA case against you claiming that you impliedly certified, by merely accepting a federal contract, that you were in full and unequivocal compliance with all NIST 800-171 standards and that you had all documentation required by DFARS 252.204-7012. The answer is absolutely "YES." *Small to mid-sized government contractors should note that their lack of diligence can be used as evidence of recklessness which gives rise to FCA liability.* [\[Read More\]](#)

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. Please subscribe to one of our podcast accounts -- [Apple Podcasts](#), [Spotify](#), [SoundCloud](#), [Google Podcasts](#), [TuneIn](#), or [Stitcher](#) -- to receive a notification when the first podcast in this series goes live on July 29, 2019, as well as find links to past podcasts.

Department of Justice (DOJ) – DOJ [reported](#) that ITT has agreed to pay the United States \$11 million to settle False Claims Act allegations that it supplied electrical connectors to the military that had not been properly tested. The settlement resolves allegations that from September 2008 to March 21, 2017, ITT did not conduct the required periodic testing on six models of electrical connectors.

GOVERNMENT CONTRACTS LAW

How Government Contractors Can Take Advantage of CPARS Trends to Win (and Maintain) Federal Contracts, July 19, 2019, [Samuel Finnerty](#)

On July 18, 2019, the Professional Services Council hosted an important event covering Contractor Performance Assessment Reporting System ("CPARS") trends, their impact on contractor past performance ratings, and the consequence they have on winning federal contracts. As one of the speakers at this event, *PilieroMazza's Samuel Finnerty offered recommendations on what government contractors can do now to proactively engage and manage their CPARS ratings and position themselves for future growth.* [\[Read More\]](#)

The Pentagon – According to Nextgov, the Pentagon released its [5-year digital modernization strategy](#). The document will offer insight on how the Pentagon plans to prioritize its roughly \$46 billion annual IT budget over the next five years. Cloud adoption, artificial intelligence, and cybersecurity will all factor in

heavily to the department's technological future, according to the strategy. Nextgov's article discussing the modernization strategy can be viewed [here](#).

The White House – Law360 reported that President Donald Trump signed an Executive Order aimed at boosting the government's purchases of U.S.-made products, marking the President's latest effort to advance his "Buy American" initiative. The Executive Order calls on agencies to buy 95% of the iron and steel used in government projects from domestic companies, marking a lofty leap from the current 50% threshold. In addition, for non-steel and iron products, the order moves the needle from 50% to 55%, with the possibility of it eventually rising as high as 75%.

ANNOUNCEMENT: PilieroMazza Welcomes [Lauren Brier](#) to [Government Contracts Group](#), July 15, 2019, [\[Read More\]](#)

CYBERSECURITY & DATA PRIVACY

Department of Defense Sets Course on Cybersecurity Evaluation and Enforcement, July 17, 2019, [David Shafer](#)

On a limited budget, government contractors need to be compliant with a litany of statutes, regulations, and industry standards in order to remain competitive in the marketplace. This has become particularly true in the cybersecurity context. With no overarching federal law for cybersecurity standards or privacy protection (though the U.S. Senate is in the process of discussing a bipartisan privacy bill as they have done, unsuccessfully, in prior legislative sessions), rulemaking authorities have taken it upon themselves to create industry regulations governing cybersecurity and data privacy. Some of them most applicable to government contractors, but by no means exclusive, are those regulations found in the Federal Acquisition Regulation ("FAR") and Defense Federal Acquisition Regulation ("DFARS"). ***In this labyrinth of cybersecurity requirements, the Department of Defense ("DoD") often takes the lead in promulgating guidance, so it is beneficial to look to DoD and the defense industrial base for the future of cybersecurity. This future may come with DoD's upcoming Cybersecurity Maturity Model Certification, which could fundamentally alter DoD government contract awards and maintenance.*** [\[Read More\]](#)

BUSINESS & CORPORATE LAW

Trends in Mergers and Acquisitions, July 22, 2019, [Francis Massaro](#)

"What's market?" is an important question for the buyer and seller to ask in a merger and acquisition (M&A). Along with counsel from a skilled M&A attorney, having a basic understanding of what terms are typical in the current M&A market will help businesses that are in the market to buy or sell a business (1) better analyze the reasonableness of specific terms offered by the other side and, if an offered term is not typical, have the necessary insight to (2) counter with better terms or to (3) take a more aggressive stance on another term. ***Businesses whose management teams are equipped with a basic understanding of M&A deal terms can easily work with M&A counsel to more effectively and efficiently identify deal terms and strategies that are ideal for their business needs.*** [\[Read More\]](#)

EVENT: Mergers and Acquisitions, September 5, 2019, Speakers, [Jonathan Williams](#) and [Kathryn Hickey](#). [\[Read More\]](#)

WEBINAR: No-Man's Land: The Quest to Find Success in Full and Open Competition, October 15, 2019, Speaker, [Kathryn Hickey](#). [\[Read More\]](#)

Kathryn Hickey and David Shafer, PilieroMazza M&A Attorneys Represent Zentech Manufacturing, Inc. in Acquisition by Blackburn Partners

[Kathryn Hickey](#) and [David Shafer](#) led a team of PilieroMazza attorneys from a cross section of the firm's practice areas – including Business & Corporate Law, Government Contracts, and Labor & Employment – to represent client Zentech Manufacturing, Inc. (Zentech), a Baltimore, Maryland-based, high-reliability electronics contract manufacturer, in its recent acquisition by BlackBern Partners LLC, a New York City based private equity firm. The partnership created by the acquisition, which closed on May 10, 2019, will accelerate efforts to deliver leading electronics manufacturing services (EMS) to the defense, aerospace, medical and other high-reliability industries. [\[Read More\]](#)

Please visit this [link](#) for a list of upcoming Industry Days and RFP tools and resources.

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.

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