

PilieroMazza Weekly Update for Government Contractors and Commercial Businesses

July 29, 2019

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

FALSE CLAIMS ACT / LITIGATION

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](#), [Google Podcasts](#), [Tuneln](#), or [Stitcher](#) – to receive a notification when the first podcast in this series, "Cybersecurity, Implied Certifications, and the False Claims Act," with [Isaias Alba](#), [David Shafer](#), and [Jon Williams](#) goes live, as well as find links to past podcasts.

CYBERSECURITY & DATA PRIVACY

Department of Defense – The DoD Office of Inspector General (OIG) conducted an audit of the protection of controlled unclassified information (CUI) on contractor-owned networks and systems. The OIG found that DoD contractors did not consistently implement DoD-mandated system security controls for safeguarding Defense information. The OIG identified deficiencies at the nine contractors assessed relating to, among others, using multifactor authentication, enforcing the use of strong passwords, identifying and mitigating vulnerabilities, protecting CUI stored on removable media, documenting and tracking cybersecurity incidents, and implementing physical security controls. The redacted audit report can be read [here](#).

GOVERNMENT CONTRACTS LAW

Better Late Than Never, But Never Late Is Better: Understanding FAR's Government Control Exceptions to Late Proposals, July 24, 2019, [Anthony Batt](#)

PilieroMazza attorneys have seen a number of government contractor clients encounter the same problem: They timely emailed a proposal to a government agency, but, for reasons unknown, the proposal was delivered late or was never received by the Contracting Officer (CO). There, the CO normally enforces the Federal Acquisition Regulation's strict "Late is Late" policy and rejects the proposal. Fortunately, in certain circumstances, it is possible to employ the Government Control Exception to salvage allegedly late proposals; however, the Government Accountability Office and the Court of Federal Claims interpret that exception differently. ***Any government contractor whose timely emailed proposal is rejected due to the "Late is Late" policy, is encouraged to work with an experienced government contracts attorney who can help them overcome the rejection.*** [\[Read More\]](#)

Court of Federal Claims Denies Oracle Protest of JEDI Contract: Is This It For Oracle? July 26, 2019,
[Lauren Brier](#)

DoD first released the Joint Enterprise Defense Infrastructure (JEDI) cloud contract on July 26, 2018. One main purpose of the JEDI contract, as listed in the DoD's published "Determination and Findings," was to acquire foundational commercial cloud technologies that would "enable war fighters to better execute a mission that is increasingly dependent on the exploitation of information." With this purpose in mind, the DoD made a controversial decision to move forward with a single-award approach to procure its cloud technologies, a critical decision that has since stymied the JEDI procurement. Most recently, the U.S. Court of Federal Claims dismissed a pre-award protest of the DoD's decision to make a single-source award, which has since allowed the JEDI contract to move forward. Microsoft and Amazon are the only two viable offerors that remain capable of receiving the award. ***The DoD's decision to award to only one of these large vendors could form a trend for agencies to move away from multicloud strategies. It will be important for cloud vendors to keep an eye on whether JEDI succeeds in its base period, as it will likely shape other agencies decisions on whether a single-award approach for future cloud strategies is a trend worth following.*** [\[Read More\]](#)

Department of Homeland Security – According to Law360, the DHS Inspector General issued a fraud alert about a scheme in which an Atlanta-based, transnational fraud ring poses as government procurement officials to steal electronics from unsuspecting contractors. Per the article, the fraud ring uses real government solicitations for electronic equipment—such as laptops, hard drives and smartphones—and sends fake requests for quotations to contractors across the country.

General Services Administration - According to Law360, the GSA OIG said in a report that a division director at GSA's Federal Acquisition Service granted a contract to McKinsey & Co. without appropriate pricing information, which could cost federal agencies an estimated \$69 million over five years. The OIG said the management consulting contract was wrongly extended to McKinsey at an inflated price, and the division director unethically advocated for McKinsey to win another deal. The OIG recommended that the GSA take steps to ensure similar deals are not awarded in the future without appropriate justification.

Government Accountability Office - According to Law360, GAO denied two companies' protests over a \$13.4 billion multi-award information technology deal, ruling that the Air Force fairly assessed their bids before rejecting them. The GAO ruled that the Air Force's evaluation of proposals from OSC-NDF LLC and Up and Running 6K LLC was reasonable and consistent with the solicitation. GAO also rejected OSC-NDF's argument that the Air Force failed to properly evaluate its bid under two past performance subcategories by ignoring the content of its proposal and imposing requirements that were not included in the call for bids.

[LABOR & EMPLOYMENT LAW](#)

Department of Labor - According to Bloomberg Government, DOL issued an opinion letter that stated that businesses that work with the federal government can proactively submit their compensation

structures to the DOL's contractor sentry for consideration and feedback. A business's compensation structure might then be considered if the business was analyzed in future pay discrimination audits.

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

BUSINESS & CORPORATE LAW

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

WEBINAR: Incentive Compensation Plans, October 15, 2019, Speaker: [Kathryn Hickey](#). [[Read More](#)]

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

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

With lawyers in Washington, DC; Boulder, CO; 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](#)
- [Mergers & Acquisitions](#)
- [Native American Law](#)
- [Private Equity and Joint Ventures](#)
- [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.

©2019 PilieroMazza PLLC
All rights reserved.