

AVOIDING LITIGATION WEBINAR SERIES

PROTECTING YOUR PRIME/SUBCONTRACT OR STRATEGIC RELATIONSHIPS



A PilieroMazza Webinar
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PRESENTED BY

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ABOUT PILIEROMAZZA

PilieroMazza PLLC is a full-service law firm located in Washington, D.C. We are most well known as government contracting firm and for 25 years we have helped our clients navigate the complexities of doing business with the federal government. We also provide a full range of legal services including advice on corporate, labor and employment, SBA procurement programs, and litigation matters. Our clients value the diverse array of legal guidance they receive from us and our responsiveness as we guide their growth and secure their success.

Sign up for our newsletters and blog at
www.pilieromazza.com

PM Legal Minute – our blog, written by all of PilieroMazza’s attorneys, provides trending insight to small and mid-sized businesses.

Legal Advisor Newsletter – our quarterly publication which addresses current issues that are of concern to federal government contractors and commercial businesses nationwide. The Legal Advisor articles focus on recent legal trends, court decision, legislative and regulatory rule-making as well as other newsworthy events.

Weekly Update – an email sent every Friday that provides an up-to-the minute recap of legislative and regulatory issues affecting small businesses.

Webinars on YouTube – all of our past webinars can be found on the PilieroMazza YouTube channel.

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NEGOTIATING A DEFINITIVE WORK SHARE CLAUSE





IN TEAMING AGREEMENTS

The 2014 Cyberlock Decision – 4th Circuit Ruling

- Teaming Agreements are merely agreements to agree unless specific terms are included

Exhibit A – work percentage should be reflected in percentage of:

- Work expected to be performed by each party
- Or by labor categories
- Or by CLINS
- If not possible develop a formula or some other method that will not be subjective



IN SUBCONTRACTS

In Subcontracts:

- When negotiating subcontracts – need a meeting of the minds
- Written details may avoid future disputes or allow for easy resolution by a tribunal if disputes arise

IDIQ Contracts and Definitive Work Share?





CLAUSES REQUIRING ESCROW ACCOUNTS TO ENSURE PROMPT PAYMENTS

- What are they?
- Why use them?
- The Assignment of Claims Act
- Impact on Existing Lines of Credit?





TERMINATIONS

Flow Down Termination Clauses – Do you want these as the prime?

- Termination for Default – requires a breach by the subcontractor
- Termination for Convenience - if the prime contract or the portion of the prime contract covered by the subcontract is terminated.
- Right to cure?





PERIOD OF PERFORMANCE CLAUSES

- Base period plus all options, modifications and extensions?
- Follow on contracts?
- What was included in the proposal to the government?





REPRESENTATIONS AND WARRANTIES

- Becoming increasingly important for prime contractors to obtain
- New Limitations on Subcontracting Rules
- SBTAs – must be written
- Certifications – can lead to investigations and possible false claims allegations
- Any certifications made by the prime contractor that pertain to the subcontractor
 - Require certifications by the subcontractor
 - Require representations and warranties



ANY BREACH OF A REPRESENTATION OR WARRANTY CONSTITUTES A BREACH OF CONTRACT

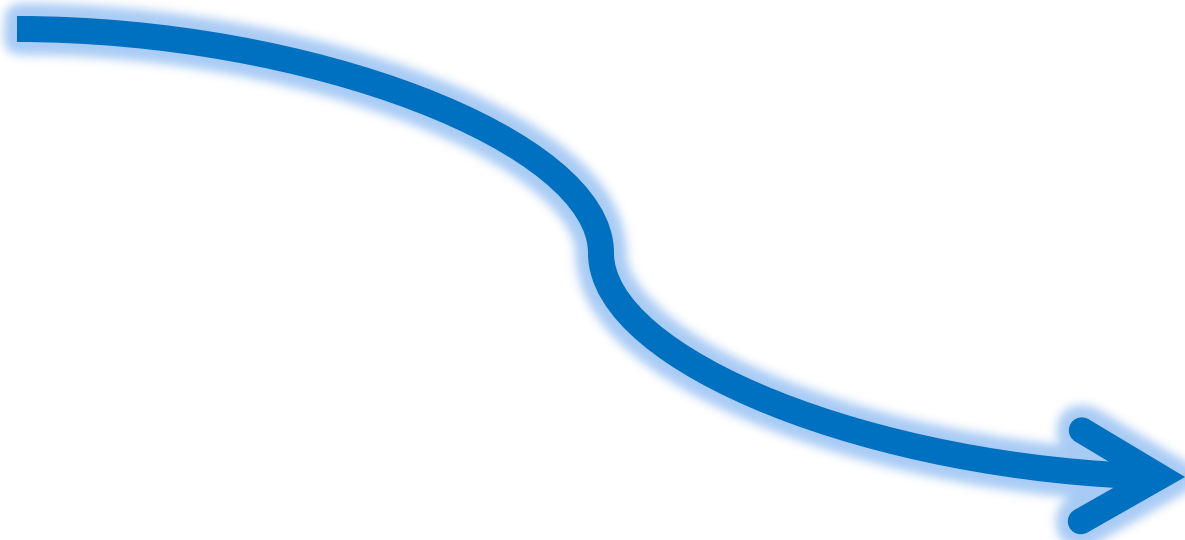
- Can lead to contract termination





USE OF FLOW DOWN PROVISIONS

- Insure compliance with labor laws and other key provisions
- Don't flow them down if they are inapplicable
- Subcontractors must READ and agree to the clauses





Any Questions?

Thank you for joining us today.

If you would like to speak with Pam or Paul about this webinar, please contact them at:

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