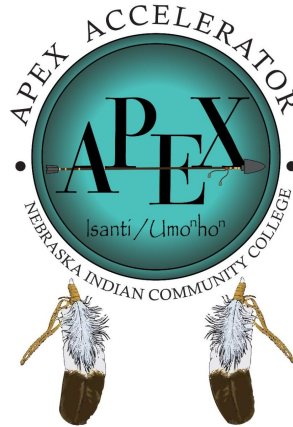


NEWSLETTER

March 2024



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TIP OF THE MONTH

What Is the Small Business “Rule of Two?”

Small businesses interested in entering the federal government contracting marketplace sometimes believe that they must obtain socioeconomic certifications, such as an 8(a) Program certification or woman-owned small business certification, to succeed. While these certifications undoubtedly can be helpful, the federal government offers a special and powerful preference program for all eligible small businesses, regardless of socioeconomic status. It’s called the small business “rule of two.”

The small business rule of two is codified in the Federal Acquisition Regulation at FAR 19.502-2. Simply put, the small business rule of two requires the government to set-aside acquisitions exclusively for small businesses when the rule’s conditions are met. A small business set-aside means that only eligible small businesses can compete for the award—no large companies allowed! For small businesses, competing for set-asides means that the competitive playing field is narrowed considerably, both in terms of the likely number of bidders, as well as the size of the competitors vying for the award.

So, when does the small business rule of two require a set-aside? The rule has two separate components depending on the anticipated dollar value of the acquisition.

First, with respect to opportunities with an anticipated dollar value between the micro-purchase threshold (currently \$10,00 for most acquisitions) and the simplified acquisition threshold (currently \$250,000 for most acquisitions), the FAR says:

“Each acquisition of supplies or services that has an anticipated dollar value above the micro-purchase threshold, but not over the simplified acquisition threshold, shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that

are competitive in terms of fair market prices, quality, and delivery.”

Second, for acquisitions above the simplified acquisition threshold, a slightly looser—but still powerful—small business preference applies:

“The contracting officer shall set aside any acquisition over the simplified acquisition threshold for small business participation when there is a reasonable expectation that- (1) Offers will be obtained from at least two responsible small business concerns; and (2) Award will be made at fair market prices.”

The small business rule of two means that regardless of a small business contractor’s socioeconomic status, there are almost certainly federal competitions available in the contractor’s line of work in which only small businesses can compete. For companies thinking that if they enter the federal contracting arena, they’ll be forced to bid against the “big boys” and “big girls” in their industries, this may be very welcome news, indeed.

NICC APEX ACCELERATOR NEWS YOU CAN USE

SBA Marks One-Year Anniversary of Veteran Small Business Certification Program

In January, the U.S. Small Business Administration marked the one-year anniversary of VetCert, the SBA-managed certification program for service-disabled veteran-owned small businesses (SDVOSBs) and veteran-owned small businesses (VOSBs). In a press release celebrating VetCert’s early success, the SBA stated that in the program’s first year, “VetCert approved more than 10,400 applications from VOSBs and SDVOSBs, averaging a remarkable 15-day processing time.” [Read the full press release here.](#)

If you want to learn more about the SBA’s SDVOSB and VOSB certifications and how they could benefit your business, or are seeking assistance with an SDVOSB or VOSB certification application, your APEX Accelerator can help! Contact your APEX counselor today to schedule an appointment.

GOVOLOGY WEBINARS

*Please use the new code **24NICC20** when registering for Govology webinars.*



Creating Your Government Market Opportunity Forecast (2024 Update)

Date: March 7, 2024

Time: 1:00 p.m. EST

Presenter: Carroll Bernard, Govology

[Click Here to Learn More](#)



Winning Strategies and Proven Best Practices for Government Prospecting (2024 Update)

Date: March 19, 2024

Time: 1:00 p.m. EDT

Presenter: Joshua Frank, RSM Federal

[Click Here to Learn More](#)



How to Build a Strong Government Sales Strategy – 8 Core Activities (2024 Update)

Date: March 21, 2024

Time: 1:00 p.m. EDT

Presenter: Matt Stavish, Republic Capital Access

[Click Here to Learn More](#)



Introduction to Indefinite Delivery Vehicles (2024 Update)

Date: March 26, 2024

Time: 1:00 p.m. EDT

Presenter: Carroll Bernard, Govology

[Click Here to Learn More](#)



Navigating Government Regulations in Solicitations and Contracts

Date: March 27, 2024

Time: 1:00 p.m. EDT

Presenter: Steven Koprince, Govology Legal Analyst

[Click Here to Learn More](#)

RECOMMENDED READINGS

OMB Directs Agencies to Apply Small Business "Rule of Two" to Task and Delivery Orders

As discussed in the Tip of the Month, the FAR's small business rule of two offers a powerful advantage to small businesses in federal contracting. That advantage may soon grow: the Office of Management and Budget (OMB) has directed agencies to apply the rule of two to task and delivery orders, which could result in billions more for small businesses.

[Read more about the OMB's directive here](#) (please log into LinkedIn to read this article).

Extraordinary Actions v. Day-to-Day Decisions for Joint Ventures: A Cautionary Tale

Under a joint venture governed by the SBA's rules, the non-managing venturer's right to veto the managing member's decisions must be strictly limited—or the JV may be found ineligible. [Read more about this SBA rule here](#).

Proposed Rule That Will Require Federal Contractors and Subcontractors to Disclose Compensation Data in Job Postings and Prohibit Compensation History Inquiries Released

The FAR Council has released a proposed rule that would prohibit federal contractors and subcontractors from seeking or considering compensation histories from job applicants. The proposed rule would also require the publication of salary ranges in certain job postings. [Read more about the proposed rule here](#).

SPECIAL INTEREST

This section highlights items of special interest and importance to the Department of Defense Office of Small Business Programs (DOD OSBP). Please take a moment to visit the sites listed below for additional information. We also suggest that you read the latest edition of the [DOD's Small Business Digest](#) (*log into LinkedIn to access this resource*) if you want to do business with the DOD.

Cybersecurity Maturity Model Certification (CMMC)/Cybersecurity Compliance Resources

[DOD CMMC Resource Page](#) – Resources to assist government contractors with understanding and complying with CMMC/cybersecurity requirements.

[Project Spectrum](#) – Project Spectrum is working with APEX Accelerators to assist small businesses in achieving compliance with CMMC/cybersecurity requirements.

Foreign Ownership, Control, and Influence (FOCI) Resources

[FOCI Frequently Asked Questions](#) -- FOCI is a status or situation in which a contractor with access to classified information has some foreign investment or association with foreign interest. Learn more about the federal government's requirements relating to FOCI.

<https://business.defense.gov/> – The official website of DOD OSBP. It contains additional information, news, events, and other items for those interested in doing business (or currently engaged) with the DOD.

CMMC & FOCI News of Note

Overview and Analysis of DoD's CMMC Proposed Rule

The DoD's proposed CMMC rule was released in late December, and experts have now had time to review and consider the proposal. [This article](#) provides a detailed look at what the proposed CMMC rule would require.

CMMC's Effective Date Appears Likely to Be Early 2025

Now that the CMMC proposed rule has been published, the question on many contractors' minds is when a final rule will become effective. Some experts are circling early 2025 on their calendars. [Read more about the CMMC's effective date here.](#)

With CMMC Looming, Military Services Explore Ways to Extend Secure Environments to Small Businesses

The Army and Navy are “exploring arrangements to extend secure environments to their smaller defense industrial base partners who can't afford to earn a cybersecurity accreditation with the Pentagon but provide innovative services the branches still want to leverage.” [Read more about these efforts here.](#)

Experts Expect Some Support for Small Businesses Facing CMMC Compliance

In the wake of the CMMC proposed rule, a group of experts agreed that the DoD is likely to adopt measures to help small businesses avoid being “squeezed out” of the DoD marketplace. [Read more about what such support may look like here.](#)

GAO Recommends Strengthening Interagency Collaboration to Prevent Foreign Interference in R&D Funding

The Government Accountability Office has issued a report recommending enhanced interagency collaboration to determine whether a funded organization is under foreign ownership, control or influence, or FOCI. [Read more about these recommendations here.](#)

Understanding FOCI: Compliance Tips for Government Contractors

For contractors who have (or seek) access to classified information or perform contracts involving national security, it is very important to [understand the FOCI rules.](#)

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