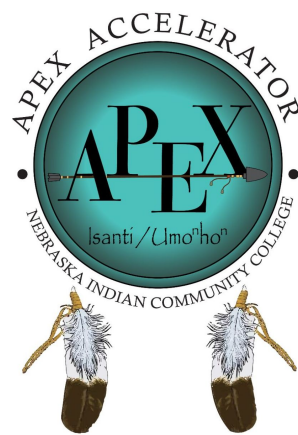


NEWSLETTER

August 2024



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TIP OF THE MONTH

The Importance of Accurate SAM Information

It is essential that federal government contractors regularly review their System for Award Management (SAM) information to make sure it is accurate and current. As demonstrated by a recent decision issued by the U.S. Small Business Administration (SBA), inaccurate SAM information could prove costly.

The decision of the SBA’s Office of Hearings and Appeals in [Red Orange LLC, SBA No. SIZ-6290 \(2024\)](#) involved a solicitation issued by the U.S. Army Corps of Engineers (USACE) as a small business set-aside. After evaluating proposals, the USACE identified Red Orange LLC as the apparent successful offeror.

The USACE contracting officer had concerns about whether Red Orange qualified as a small business and referred the matter to the SBA under the SBA’s size protest procedures. The SBA then contacted Red Orange, using the email address Red Orange provided in its SAM profile for its primary point of contact, asking Red Orange to provide tax returns and other information the SBA required to evaluate Red Orange’s small business status.

The SBA did not receive a response either to this initial email or to a follow-up email sent to the same email address. Accordingly, the SBA applied a so-called “adverse inference,” under which the SBA may assume that if a business does not provide relevant information when requested, that information would demonstrate that the business is not small. The SBA deemed Red Orange “other than small” and ineligible for the USACE contract.

When Red Orange learned of the SBA’s decision, it filed an appeal. Red Orange stated that the email listed in its SAM profile for its primary point of contact was “not an email that is monitored by members of the management staff,” including the primary POC himself, but instead was “used for . . . accounts receivable.” Accordingly, Red Orange contended, it

never had fair notice of the size challenge.

The SBA’s Office of Hearings and Appeals (OHA) rejected this argument. The judge wrote that although Red Orange “may have subjectively intended” that the email address “should be used only for matters pertaining to accounts receivable,” it “nevertheless listed [the email address] on SAM.gov as the e-mail for [its] primary point-of-contact.” Thus, the judge wrote, Red Orange “publicly represented” that the email address was “an appropriate method” of contacting Red Orange and was responsible for monitoring the email address for communications sent by the government. SBA OHA denied the appeal, and Red Orange lost the contract.

The *Red Orange* decision is an important reminder that it is important not only that federal contractors maintain active SAM profiles but that they regularly verify that the information provided in their profiles is current and accurate.

NICC APEX ACCELERATOR NEWS YOU CAN USE

Navigating SBA’s Certification System Upgrade

Beginning August 1, 2024, the U.S. Small Business Administration (SBA) will be upgrading the system it uses to process applications for socioeconomic contracting certifications, such as the 8(a) Program certification and HUBZone certification. The upgrade is expected to be completed in early September. During the upgrade period, the SBA will not be accepting new applications but will continue to process previously submitted applications. For more information, visit the [SBA’s website](#).

If you are interested in learning more about the SBA’s certifications or applying for a socioeconomic certification, your APEX Accelerator can help! Contact your APEX Accelerator counselor today for an appointment.

GOVOLOGY WEBINARS

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



Leveraging Policy Information in Government Contracting

Date: August 8, 2024
Time: 1:00 p.m. EDT
Presenters: Amanda Swanson Goff and Amber Hart, The Pulse of GovCon LLC

[Click Here to Learn More](#)



How to Take Advantage of Your Socio-Economic Status Effectively – It’s Not What You Think (2024 Update)

Date: August 13, 2024
Time: 1:00 p.m. EDT
Presenter: Joshua Frank, RSM Federal

[Click Here to Learn More](#)



Cash Flow: The Key to Obtaining More Government Contracts

Date: August 15, 2024
Time: 1:00 p.m. EDT
Presenter: Scott Peper, Mobilization Funding

[Click Here to Learn More](#)



GSA Multiple Award Schedule – Is It Right For Your Company? (2024 Update)

Date: August 20, 2024
Time: 1:00 p.m. EDT
Presenter: Rich Earnest, Earnest Consulting Group

[Click Here to Learn More](#)

RECOMMENDED READINGS

Excluded Proposal Highlights Risk to Prime Contractors of Subcontractor “Direct to Government” Information Submissions

It’s not uncommon for the federal government to allow a prospective subcontractor to submit certain proposal information, such cost or pricing buildups, directly to the government, instead of submitting it through the prospective prime contractor. For primes, though, this approach can be risky. As a recent bid protest decision demonstrates, if there is something amiss in the subcontractor’s direct submission, the prime has no opportunity to review and fix it—and the faulty submission could [doom the entire proposal](#).

ASBCA Awards Contractor \$4.9 Million in Delay Damages

When delays are at issue in a government contract, it’s usually the government complaining that the contractor didn’t complete the project on time. Delays can cut both ways, though. Recently the Armed Services Board of Contract Appeals awarded a contractor nearly \$5 million in [damages for government-caused delays](#).

SBA Will Eliminate Remaining SDVOSB Self-Certification December 2024

On the heels of the recent elimination of self-certification at the prime contract level for service-disabled veteran-owned small businesses, the SBA has taken the next step. Under a new rule, companies will soon be prohibited from [self-certifying as SDVOSBs at the subcontract level](#), too.

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.

Cybersecurity Provisions in the Draft FY 2025 National Defense Authorization Act

The House and Senate drafts of the [2025 National Defense Authorization Act](#) both include several provisions addressing cybersecurity. For example, the House version of the bill would require the Department of Defense to provide incentives to contractors to assess and monitor their supply chains for potential vulnerabilities and risks.

CMMC 2.0 on Track to Start Early 2025

[CMMC version 2.0](#) “is on track to start at the beginning of next year,” according to a senior DoD official.

CMMC Final Rule Moves to OIRA Review

[The CMMC final rule](#) has moved to the last regulatory phase before publication—review by the Office of Information and Regulatory Affairs.

Consulting Companies to Pay \$11.3M for Failing to Comply with Cybersecurity Requirements in Federally Funded Contract

The Department of Justice has announced that [two companies will pay more than \\$11 million](#) to resolve False Claims Act allegations that the companies failed to comply with cybersecurity requirements in federally funded contracts.

DoD Instruction Expands DCSA’s FOCI Reach Beyond Cleared Contractors

[The DoD recently issued an instruction](#) implementing policies and procedures that will, for the first time, subject many uncleared DoD contractors to rigorous disclosure requirements, scrutiny, and potential mitigation by the Defense Counterintelligence and Security Agency (DCSA).

***About Nebraska Indian Community College
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