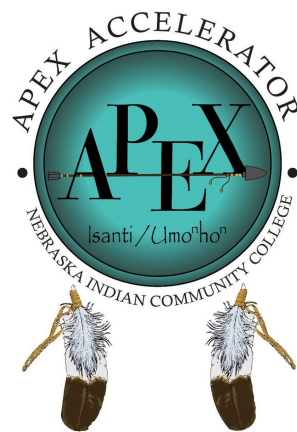


NEWSLETTER

November 2024



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TIP OF THE MONTH

Understanding The SBA’s “Direct Ownership” Requirements

Small business owners sometimes choose to own equity stakes in their businesses through other entities, such as holding companies or trusts. Depending on an individual’s unique circumstances, doing so could be advantageous for tax, liability, or estate planning purposes. However, as a recent decision of the U.S. Small Business Administration’s (SBA) Office of Hearings and Appeals (OHA) demonstrates, participants in three of the SBA’s popular certification programs ordinarily must own at least 51% of their interests directly, not through another entity.

SBA OHA’s decision in [American Defense Builders Trust, SBA No. VSBC-395-A \(2024\)](#) involved an application for service-disabled veteran-owned small business (SDVOSB) certification filed by the American Defense Builders Trust. The company was 100% owned by an irrevocable trust, which, in turn, was 100% owned by a service-disabled veteran. The SBA denied the application, stating that the trust did not satisfy the requirement, under [13 C.F.R. 128.202](#), that an SDVOSB be directly owned by one or more service-disabled veterans.

The only exception, the SBA noted, is for a trust that is “revocable, and [where] qualifying veterans are the grantors, trustees, and the current beneficiaries of the trust.” The trust in question was irrevocable and, therefore, did not satisfy the direct ownership requirement.

On appeal, SBA OHA quoted the direct ownership regulation, 13 C.F.R. 128.202. It wrote that the applicant had “never even attempted to deny” that the trust was irrevocable and, therefore, non-compliant with the rule. SBA OHA affirmed the SBA’s denial of the applicant’s request for SDVOSB certification.

The direct ownership regulation in 13 C.F.R. 128.202 applies to veteran-owned small businesses and SDVOSBs. Additionally, two of the SBA’s other certification programs have

essentially identical requirements. For the 8(a) Business Development Program, the direct ownership requirement can be found in [13 C.F.R. 124.105](#). For the Woman-Owned Small Business Program (and the Economically Disadvantaged Woman-Owned Small Business subset), the requirement is set forth in [13 C.F.R. 127.202](#). The HUBZone Program does not mandate direct ownership.

As the *American Defense Builders Trust* case demonstrates, when a small business is interested in becoming certified under the SBA’s SDVOSB/VOSB, 8(a), or WOSB/EDWOSB program, the company ordinarily must be owned at least 51% *directly* by the individuals who possess the qualifying characteristics (such as 51% direct ownership of an SDVOSB by service-disabled veterans). The only exception is for certain trusts identified in the regulations—an irrevocable trust is not one of them.

If you are considering applying to one of these programs and have questions about how your company’s ownership structure may affect your eligibility, you would be well-advised to consult an experienced government contracts attorney before submitting the application.

NICC APEX ACCELERATOR NEWS YOU CAN USE

Potential Changes for SBA Mentor-Protégé Joint Ventures:
What Small Businesses Should Know

The SBA’s Mentor-Protege Program provides powerful contracting benefits to both mentors and proteges alike. The SBA has recently proposed a series of changes and clarifications to the rules governing the SBA Mentor-Protege Program and also floated the possibility of more extensive changes down the road. [This article](#) takes a look at what changes the SBA has proposed and what changes are mere “trial balloons” for consideration.

If you are interested in applying to the SBA’s Mentor-Protege Program or another federal Mentor-Protege Program, your APEX Accelerator can help! Contact your APEX Accelerator counselor today to schedule an appointment.

GOVOLOGY WEBINARS

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



How to Leverage Your GSA Schedule to Win
More Government Contracts (2024 Update)

Date: November 5, 2024
Time: 1:00 p.m. EST
Presenter: Rich Earnest, Earnest Consulting Group

[Click Here to Learn More](#)



DCAA: Elements of an Adequate Proposal

Date: November 12, 2024
Time: 1:00 p.m. EST
Presenter: Katelyn Rigle, Defense Contract Audit Agency

[Click Here to Learn More](#)



The Ins and Outs of Personnel Security Clearances

Date: November 19, 2024

Time: 1:00 p.m. EST

Presenter: Steven Koprince, Govology Legal Analyst

[Click Here to Learn More](#)

RECOMMENDED READINGS

SBA Proposed Rule: New Size and Status Recertification Standard

Federal contractors often wonder whether they can continue to qualify as small businesses or maintain a socioeconomic certification (e.g., 8(a), SDVOSB) after a change in ownership or business structure. In its [recently proposed rule](#), the SBA offers some clarifications and changes to existing rules.

SBA Proposes Substantive Changes to Negative Control and Unconditional Ownership and Control Considerations Across Socioeconomic Programs: Key Considerations and Takeaways

The SBA's major proposed rule has multiple components. [This article](#) takes a look at another important aspect of the proposed rule: potential changes to the rules governing unconditional ownership and control under SBA's various programs.

Judge Partially Blocks DOT's DBE Program

A federal judge has issued a preliminary injunction against the Department of Transportation's Disadvantaged Business Entity Program. The DOT DBE Program sets goals that at least 10% of dollars in federal contracts be awarded to women- and minority-owned firms, which are presumed disadvantaged under the program. While the [preliminary injunction](#) is very limited in scope, it could open the door to additional challenges to the legality of the preferences established in the DOT DBE Program.

CMMC & FOCI RESOURCES AND NEWS

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 2.0: Department of Defense Releases New Proposed DFARS Rule to Implement its Cybersecurity Maturity Model Certification 2.0 Program

Expert analysis of August’s CMMC proposed rule continues to roll in. [This article](#) offers a look at key takeaways and next steps from the proposal.

DoD Looks to Ensure Programs Mark Sensitive ‘CUI’ Data

The [Pentagon is developing training and tools](#) to ensure its program managers know when and how to mark sensitive information that will trigger CMMC requirements.

Timely Actions Needed to Address Risks Posed by Consultants Working for China

In a [recent report](#), the Government Accountability Office has issued a series of recommendations for federal agencies and contractors to address the risks of consultants working with U.S. adversaries such as China.

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