

NEWSLETTER

October 2024



Share



Tweet



Forward



Share

TIP OF THE MONTH

FOIA and Federal Contracting Proposals

When companies first consider entering the federal contracting marketplace, one common concern is whether doing business with Uncle Sam might expose the company's confidential business information to their competitors. After all, a typical proposal is stuffed with information that could be valuable to competitors, often including technical, price, and past performance information. Can a contractor's competitors simply use the federal Freedom of Information Act (FOIA) to obtain the contractor's proposal?

Fortunately, the answer usually is "no." The drafters of the Federal Acquisition Regulation understood that if companies were allowed to simply "FOIA" their competitors' proposals, it could have a severe detrimental effect on the federal contracting marketplace. Many companies may choose to forego doing business with the federal government, while others may avoid offering their best technical solutions or pricing to avoid risking their most valuable information falling into the hands of their competitors.

To prevent this problem, FAR 24.202(a) states:

"A proposal in the possession or control of the Government, submitted in response to a competitive solicitation, shall not be made available to any person under the Freedom of Information Act. This prohibition does not apply to a proposal, or any part of a proposal, that is set forth or incorporated by reference in a contract between the Government and the contractor that submitted the proposal."

In addition to this protection, the federal Trade Secrets Act, codified at [18 U.S.C. 1905](#), can be viewed as an independent bar on certain disclosures of proposal information. Moreover, the FOIA statute itself includes several exemptions from disclosure. [Exemption 4](#) excludes from mandatory FOIA disclosure "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."

Together, FAR 24.202, the Trade Secrets Act, and Exemption 4 generally provide robust FOIA protection for a competitive proposal submitted to the government. That's not to say, however, that a federal contractor shouldn't be prepared to take additional steps to ensure its information remains protected.

Contractors should be sure to follow any instructions in the solicitation regarding the marking of confidential information. For example, FAR 52.215-1 provides instructions for marking data that the offeror does "not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes." Additionally, if an agency receives a FOIA request for a proposal, the agency may contact the contractor to determine whether it objects to the release. Assuming the contractor objects, it should respond to the agency promptly, providing the reasons for the objection.

NICC APEX ACCELERATOR NEWS YOU CAN USE

SBA Proposes Updates to HUBZone Program & 8(a) Program Rules

The U.S. Small Business Administration has released a major proposed rule. The SBA's proposal, if finalized, would make many changes to the regulations governing the HUBZone Program and 8(a) Business Development Program, among others. If you are currently a participant in the HUBZone Program or 8(a) Program or are considering applying, it's advisable to understand the SBA's proposal and how it could impact your business. Please see [this article](#) for more information about the SBA's proposed changes to the HUBZone Program. Also, please see [this article](#) for more information about the SBA's proposed 8(a) Program changes.

If you have questions about HUBZone Program or 8(a) Program eligibility or need assistance with applying, your APEX Accelerator can help! Contact your APEX counselor today to arrange an appointment.

GOVOLOGY WEBINARS

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



Your Step-by-Step Process to Becoming a GSA Schedule Holder

Date: October 3, 2024

Time: 1:00 p.m. EDT

Presenter: Rich Earnest, Earnest Consulting Group

[Click Here to Learn More](#)



DIBBS System Overview – Searching for and Bidding on Opportunities (2024 Update)

Date: October 8, 2024

Time: 1:00 p.m. EDT

Presenter: Joshua Frank, RSM Federal

[Click Here to Learn More](#)



Communicating with Government Contracting Officials: What Can (and Should) Contractors Really Say and Do? (2024 Update)

Date: October 10, 2024

Time: 1:00 p.m. EDT

Presenter: Nicole Pottroff and John Holtz, Koprince McCall Pottroff LLC

[Click Here to Learn More](#)



Key Government Contacts to Help You Secure More Contracts

Date: October 17, 2024

Time: 1:00 p.m. EDT

Presenters: Ashley Duwel, Duwel Dev, LLC

[Click Here to Learn More](#)



Intro to DCAA and the Audit Process

Date: October 24, 2024

Time: 1:00 p.m. EDT

Presenter: Katelyn Ragle, Defense Contract Audit Agency

[Click Here to Learn More](#)

RECOMMENDED READINGS

Lesson Learned: Board Holds that Only the Contracting Officer Can Bind the Government

Government contractors sometimes erroneously believe that anyone employed by the government can direct or authorize the contractor to perform new or changed work. In fact, contracting authority is strictly limited to appropriately-warranted contracting officers. As one contractor recently learned the hard way, [following the direction or suggestion of an unauthorized government official could leave the contractor holding the bag](#).

Top 3 Relationships That Open Federal Agency Doors for Small Businesses

You may have heard that government contracting is a relationship-driven business. But as a small business owner looking to grow in the federal marketplace, what relationships should you prioritize? [This article offers some practical advice](#).

SBA Contemplates Rule Changes for HUBZone Firms and Mentor-Protégé Joint Ventures

The U.S. Small Business Administration (SBA) has proposed rule changes that will have significant implications for HUBZone firms and government contractors involved in joint ventures and the SBA's Mentor-Protégé Program. To learn more about these potential changes and how to provide input to the SBA, check out [this LinkedIn post](#).

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.

The CMMC Rule to Update the DFARS is Here!

The Department of Defense has published its long-awaited proposed rule to implement CMMC. This article provides a [high-level overview of what contractors should know about the proposal](#).

DOD Proposed Rule Introduces Standard Terms for Contracts Subject to CMMC 2.0, Including Yet Another 72-Hour Notification Requirement

The CMMC proposed rule has received a great deal of attention throughout the government contracting community. This article provides [another look at what the DoD has proposed](#).

DOJ Brings Suit Against University Under Its Civil Cyber-Fraud Initiative

As CMMC moves forward, a recent lawsuit is an important reminder that allegedly failing to abide by contractual cybersecurity requirements could [create risks under the False Claims Act](#).

Podcast - Understanding FOCI Mitigation

FOCI concerns can often be mitigated by taking action to address the underlying issue. This podcast provides an overview of FOCI mitigation. [Listen to the podcast here](#).

About Nebraska Indian Community College APEX Accelerator:

Address (Macy Campus):

1111 Hwy. 75/P.O. Box 428
Macy, NE 68039
(Coverage Area: Omaha Indian Reservation)

Address (Santee Campus):

415 North River Road
Niobrara, NE 68760
(Coverage Area: Santee Sioux Indian Reservation)

E-mail us: APEX@thenicc.edu

This APEX Accelerator (formerly known as PTAC) is funded in part through a cooperative agreement with the Department of Defense.

Copyright © 2024 Nebraska Indian Community College APEX Accelerator, All rights reserved.

Want to change how you receive these emails?
You can [update your preferences](#) or [unsubscribe from this list](#)

