

NEWSLETTER

September 2024



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TIP OF THE MONTH

Understanding Economic Dependence Affiliation

Imagine this scenario: your services company has been in business for six years and has average annual receipts of approximately \$5 million. Over the lifetime of your company, 95% of its receipts have been generated through work for a single customer: Alphabet, Inc., the parent company of Google. Your company’s primary North American Industry Classification System (NAICS) code is 561312 (Executive Search Services), with an associated small business size standard of \$34 million. Does your company qualify as a small business?

Probably not. In fact, as far as the U.S. Small Business Administration (SBA) is concerned, your company’s revenues exceed \$300 *billion* because of so-called “economic dependence” affiliation with Alphabet, Inc.

Under the [SBA’s regulations](#), affiliation occurs when “one [company] controls or has the power to control the other, or a third party or parties controls or has the power to control both.” When a company has an affiliate, the SBA will determine the company’s size by adding its affiliate’s average annual receipts or average number of employees to the company’s own. Affiliation with a large business, therefore, will cause a small business to be deemed “other than small” for federal contracting purposes.

Many of the SBA’s affiliation rules, such as those involving common ownership, are relatively intuitive. Others, including the economic dependence rule, are less so. According to the SBA’s regulations, “SBA may presume [affiliation] based upon economic dependence if the concern in question derived 70% or more of its receipts from another concern over the previous three fiscal years.” The policy behind the rule is that when a company relies heavily on a single customer for its revenues, the company is likely to act in accordance with that customer’s wishes, even if the customer has no ownership interest in the company—thus, giving the customer the “power to control.”

The regulations allow a company to attempt to rebut the presumption of economic dependence affiliation, such as by showing that the company “has only been able to secure a limited number of contracts or where the contractual relations do not restrict the concern in question from selling the same type of products or services to another purchaser.” However, decisions issued by the SBA’s Office of Hearings and Appeals suggest that successfully rebutting the presumption can be difficult.

In our example above, the hypothetical company received more than 70% of its receipts from Alphabet for significantly longer than the three-year period established by the regulations. Chances are, the SBA would deem our poor hypothetical company affiliated with Alphabet—and thus, ineligible for small business status.

One final note about the economic dependence rule: it does not apply to the federal government. In other words, if your company generates more than 70% of its revenues—even 100%—from contracts with the federal government, your company will not be deemed affiliated with Uncle Sam.

For more information about the economic dependence rule and other SBA affiliation rules you should know, see [13 C.F.R. 121.103](#).

NICC APEX ACCELERATOR NEWS YOU CAN USE

GAO Reminder: Joint Ventures Must Register in SAM

Joint ventures seeking federal government contracts must separately register in the System for Award Management (SAM)—even if the joint venture is unpopulated and both members are separately registered. In a recent Government Accountability Office (GAO) bid protest decision, an agency excluded a joint venture from award when it was not separately registered in SAM. The joint venture protested its exclusion, but the GAO held that the agency had acted correctly by excluding the joint venture. [Read more about the GAO’s decision](#) and the underlying legal requirements.

If you have any questions about registering a joint venture in SAM or need assistance, your APEX Accelerator can help! Contact your APEX Accelerator counselor today to arrange an appointment.

APEX ACCELERATOR EVENTS

The 7 Native APEX Accelerators Present: Buoy Your Small Business with the Navy SBIR/STTR Program!

Date: Wednesday, October 2, 2024

Time: 1:00 PM EDT

Format: FREE Virtual Online Event

[Click here to register](#)

Your center is holding a FREE Virtual Event that you might be interested in!

The 7 Native APEX Accelerators Present: Buoy Your Small Business with the Navy SBIR/STTR Program!

About: Are you a small business looking for non-dilutive funding? Learn how the Navy can help you transform your innovative ideas into cutting-edge technologies with funding through the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs.

This webinar provides the goals of SBIR and STTR, explains the three phases of the program, outlines eligibility requirements, and elucidates the Navy's schedule for soliciting proposals. Along the way, we will explore what makes the Navy's SBIR and STTR Programs especially successful in transitioning projects from research and development to commercialization.

GOVOLOGY WEBINARS

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



GovCon Mergers and Acquisitions

Date: September 5, 2024
Time: 1:00 p.m. EDT
Presenter: Justin Siken, HigherGov

[Click Here to Learn More](#)



Hiring a Strong Business Developer – How Any Company Can Hire Superstars (2024 Update)

Date: September 10, 2024
Time: 1:00 p.m. EDT
Presenter: Joshua Frank, RSM Federal

[Click Here to Learn More](#)



Maximize Your Potential with the SBA’s Mentor-Protégé Program

Date: September 17, 2024
Time: 1:00 p.m. EDT
Presenter: Steven Koprince, Govology Legal Analyst

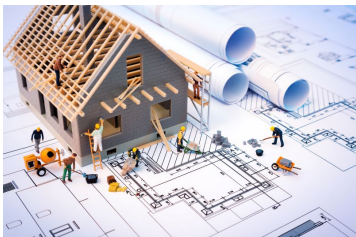
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The Buy Indian Act: Regulatory Updates and Their Implications for Tribal-Owned Businesses

Date: September 19, 2024
Time: 1:00 p.m. EDT
Presenters: Nicole Pottroff and Shane McCall, Koprince McCall Pottroff LLC

[Click Here to Learn More](#)



Winning Federal Construction Contracts (2024 Update)

Date: September 24, 2024
Time: 1:00 p.m. EDT
Presenter: Carroll Bernard, Govology

[Click Here to Learn More](#)

RECOMMENDED READINGS

The Impact of Chevron Reversal on Government Contracting

The Supreme Court's recent decision to eliminate so-called *Chevron* deference will have a significant impact on how courts interpret and apply agency regulations. But what impact, specifically, will the decision have on federal government contractors? [This article offers a look at what may lie ahead.](#)

Common Misconceptions: The SBA's Mentor-Protege Program

The SBA's Mentor-Protege Program (MPP) offers powerful benefits to its participants, but the rules surrounding the program can be confusing, fueling many misconceptions. This two-part series tackles a host of misconceptions, including those surrounding when a mentor-protege agreement is necessary for a joint venture to be eligible for award, when a mentor and protege are exempt from affiliation, how long a MPP agreement can last, and more. Read [Part I – MPP JVs & Affiliation Shield](#) and [Part II – Participation Rules & Limits](#).

Nationwide Injunction Halts Key Provisions of Davis-Bacon Act Regulations

A federal court recently issued a nationwide injunction prohibiting the Department of Labor from enforcing three provisions of its updated regulations implementing the Davis-Bacon Act and Related Acts, the series of statutes addressing prevailing wages for workers on federal construction contracts. [Read more about the injunction.](#)

NASA Announces Strategic Pause on the SEWP VI GWAC Request for Proposals

NASA has announced a strategic pause on the SEWP VI Request for Proposals, with the proposal due date to be extended. This decision follows a review of submitted questions and feedback, aiming to ensure a transparent and collaborative process. Updates on the new timeline and any changes to the RFP will be communicated via SAM.gov and the SEWP website after a review period. [Read more about this announcement.](#)

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 in to 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.

Data, Deals, and Diplomacy: How the Bulk Data Executive Order Will Shape Future Contracts and Security Practices

A recent Executive Order directs the Department of Justice to issue regulations “to either

outright prohibit or impose restrictions on transactions involving bulk sensitive personal data or U.S. Government-related data when such transactions involve a ‘country of concern.’” Read more about [what these upcoming rules could mean for contractors](#).

Missouri-Based Defense Department Contractor Sentenced for Fraud

A defense contractor has been sentenced after pleading guilty to “[violating] the law by providing diagrams of necessary parts and other ‘military critical technical data,’ which was restricted and protected information, to foreign individuals and/or entities to obtain those parts.” [Read more about this case](#).

DoD Instruction Intended to Protect Defense Supply Chain: Defense Contractors and Subcontractors Subject to Additional Filings and DCSA Reviews

A recent DoD Instruction “expands the Foreign Ownership Control and Influence (FOCI) review process from contractors that hold DoD clearances and access classified information to all DoD contractors—cleared or not—that hold certain contracts in excess of \$5 million.” Read more about the [expanded FOCI coverage](#).

***About Nebraska Indian Community College
APEX Accelerator:***

Address (Macy Campus):

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Macy, NE 68039
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Address (Santee Campus):

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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.

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