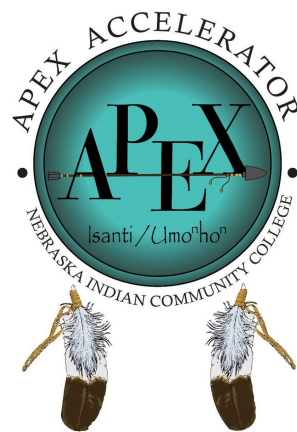


NEWSLETTER

February 2025



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TIP OF THE MONTH

“Late is Late” and Electronic Proposal Submissions

Federal government agencies are increasingly requiring offerors to submit their proposals electronically, whether by email or through a portal. While electronic proposal submissions can be convenient, they also pose risks to contractors—especially those who may be inclined to wait to hit “submit” until very close to the proposal deadline.

Under the strict “late is late” doctrine developed by the U.S. Government Accountability Office (GAO) in its bid protest decisions, if something goes wrong with a contractor’s attempt to submit an electronic proposal and the proposal arrives late, the contractor may be out of luck, even if the problem appears to be outside of the contractor’s control. Here are three examples of how strictly the GAO applied its “late is late” doctrine in 2024:

- In [Guidehouse Inc., B-422115.2 \(Jan. 19, 2024\)](#), the GAO held that an agency properly rejected a proposal as late where the offeror submitted the proposal before the deadline, but the agency’s cybersecurity software rejected the transmission. The GAO wrote that it was up to the offeror to ensure that its proposal was actually delivered to the government.
- In [ICS Nett, Inc., B-422575 \(July 24, 2024\)](#), the GAO held that the agency properly rejected a proposal as late where, due to alleged error messages from the government portal, one of the offeror’s volumes was uploaded one minute after the deadline. The GAO found no evidence that the portal malfunctioned and wrote: “When transmitting a proposal electronically, it is an offeror’s responsibility to submit its proposal sufficiently in advance of the time set for receipt of proposals to ensure proper delivery of the proposal and timely receipt by the agency.”
- In [NAG Marine, B-422899 \(Dec. 12, 2024\)](#), the offeror began attempting to upload its proposal about 30 minutes before the deadline. As in ICS Nett, the offeror alleged it experienced technical difficulties, and its proposal was not received until a few minutes after the deadline. Once again, the GAO determined that the agency appropriately rejected the proposal.

The [Court of Federal Claims \(COFC\) takes a somewhat less aggressive posture](#) than the GAO when it comes to the lateness of electronic submissions. Nevertheless, contractors can't be assured that the "COFC" will rule in their favor if they experience problems submitting an electronic proposal—and going to court can be an expensive proposition. So, what can contractors do to avoid the problem in the first place?

Occasionally, the government imposes such tight deadlines that a last-minute submission is unavoidable, but in most of the "late is late" GAO cases, the contractor chose to wait until very close to the deadline to attempt to submit its proposal. In contrast, submitting a proposal early will allow a contractor time to address any technical issues that may arise and potentially obtain government confirmation that the proposal was received.

In acquisitions governed by FAR Part 15, submitting a day early may offer a form of "late is late" insurance. [FAR 15.208\(b\)\(1\)](#) states that the government may accept an otherwise late electronic proposal if it was "received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals." This FAR provision can be a contractor's saving grace if, for example, the proposal gets bottled up in the government's spam filter.

As Yogi Berra once said, "It gets late early out there." Making a plan to submit electronic proposals early is the best way to avoid last-minute stresses and the potential for a "late is late" proposal rejection.

NICC APEX ACCELERATOR NEWS YOU CAN USE

SBA Releases Final HUBZone Rule Update, Other Small Business Changes

The U.S. Small Business Administration has released final changes to the rules governing its Historically Underutilized Small Business Program (HUBZone), as well as changes to the SBA's other government contracting programs. For more information on the changes made by the SBA's rule, see this [article](#).

SBA certifications like the HUBZone certification can be powerful tools for government contractors. If you're interested in learning more about the HUBZone certification or other SBA contracting certifications or are beginning the application process, your APEX Accelerator can help! Contact your APEX counselor today to schedule an appointment.

NICC APEX ACCELERATOR EVENTS

2025 Midwest Matchmaker

Date: Tuesday, February 18, 2025

Time: 9:00 a.m. – 5:00 p.m. CST

Format: Online – accessible to all businesses, nationwide!

Cost: FREE – no registration fee

[Click here to register](#)

Join the 2025 Midwest Matchmaker: Connecting Small Businesses with Government Buyers

Are you a small business looking to expand your reach and connect with government buyers? The 2025 Midwest Matchmaker is your chance to meet federal, state, and local government procurement officials. This unique opportunity will bring together businesses and buyers in one of the largest online procurement events in the region.

Event Highlights:

- **Who:** Hosted by APEX Accelerators from Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Minnesota, Montana, and Wyoming, along with NADC APEX in Billings, MT, and the Nebraska Indian Community College APEX.
- **What:** An online matchmaking event that allows businesses to:
 - Schedule pre-arranged appointments with government buyers, prime contractors and resource partners
 - Explore procurement opportunities at all levels.

Why Attend?

- Meet directly with procurement officials from federal, state, and local governments.
- Build relationships that could lead to future contracts.
- Network with other businesses in your field.
- Gain valuable insights into the procurement process.

Who Can Attend?

- The event is open to all businesses – whether you're new to government contracting or an experienced vendor, this is a chance to expand your network and grow your business.

Additional note: The registration will ask companies to identify their NAICS Codes, which is what helps with the matchmaking process. Please reach out to your NICC APEX Accelerator Counselor if you need help with identifying their NAICS Codes.

Event Agenda:

- 9:00 AM - 5:00 PM
- One on One Meetings
- Meet with Buyers, Suppliers or Resource Partners during 12 minute sessions.

GOVOLOGY WEBINARS

*Please use the new code **52NICC20** when registering for Govology webinars.*



Intro to US Export Compliance: ITAR and EAR (2025 Update)

Date: February 4, 2025

Time: 1:00 p.m. EST

Presenter: Jack Shelton, Aegis Trade Law LLC

[Click Here to Learn More](#)



DCAA: Incurred Cost Submissions

Date: February 11, 2025

Time: 1:00 p.m. EST

Presenter: Katelyn Ragle, Defense Contract Audit Agency

[Click Here to Learn More](#)



How to Build a Strong Government Sales Strategy – 8 Core Activities (2025 Update)

Date: February 18, 2025

Time: 1:00 p.m. EST

Presenter: Joshua Frank, RSM Federal

[Click Here to Learn More](#)



Understanding VIPR – Virtual Incident Procurement (2025 Update)

Date: February 20, 2025

Time: 1:00 p.m. EST

Presenter: Dee Edwards, GCAP

[Click Here to Learn More](#)



Foreign Ownership, Control or Influence (FOCI) Rules for Federal Contractors (2025 Update)

Date: February 25, 2025

Time: 1:00 p.m. EST

Presenter: Steven Koprince, Govology

[Click Here to Learn More](#)

RECOMMENDED READINGS

But My Affiliates ARE Me! GAO Rules Agencies May Limit Use of Affiliate Experience and Past Performance

The rules governing when a federal contractor can “use” the past performance and experience of its corporate affiliates are often misunderstood. In a recent bid protest decision, the GAO held that an agency acted properly by refusing to allow a mentor-protégé joint venture to use the past performance and experience of a wholly-owned subsidiary of the protégé. [Read more about this GAO decision.](#)

SBA Issues Final Rule to Streamline WOSB Program Rules

The SBA has issued a final rule making changes to the regulations governing the SBA’s Woman-Owned Small Business Program (WOSB). One of the most notable changes will make it easier for women to qualify their businesses for WOSB certification while still maintaining employment elsewhere. [Read more about the WOSB changes.](#)

Proposed Increases to Micro-Purchase, Simplified Acquisition, and Other Thresholds

The FAR Council has issued a proposed rule to make inflation-based adjustments to several commonly-used dollar thresholds. If adopted, the rule would increase the simplified acquisition threshold, micro-purchase threshold, and several other thresholds. [Read more about this proposed rule.](#)

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.

DoD Issues Proposed Rule for New Disclosures on Foreign Review of Computer Code

The Department of Defense (DoD) has issued a proposed rule to require contractors to make a number of disclosures regarding foreign involvement in certain technology sold to the government. For example, the proposed rule would require the contractor to disclose whether it “has allowed a foreign person or foreign government to review the source code for any product, system, or service that DoD is using or intends to use, or the computer code for any other than commercial product, system, or service developed for DoD.” [Read more about this proposed DoD rule.](#)

Seldom-Discussed CMMC Effects on a Defense Contractor’s Business

[This article](#) discusses a number of potential “practical impacts” of the recent CMMC final rule on government contractors, touching on bid protests, joint ventures, small business matters, and more.

Pentagon’s Cybersecurity Mandate CMMC 2.0 Likely to Survive Under Trump

The incoming administration has promised to slash government regulations, but experts agree that [CMMC is likely to remain in effect](#) in the new administration.

A Comprehensive Overview of FOCI Mitigation (Video)

In the latest episode of the ongoing FOCI video series, the hosts discuss FOCI mitigation strategies such as proxy agreements and outside directors. [View the video.](#)

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

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