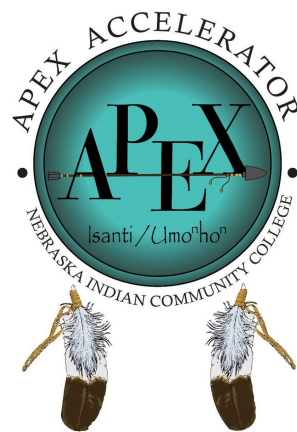


NEWSLETTER

January 2025



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TIP OF THE MONTH

Restrictions on Subcontractor Sales to the Government

The federal government contracting marketplace is very competitive. If two companies choose to work together as prime contractor and subcontractor on one contract, it's not uncommon for the same two companies to find themselves competing for another contract. With that possibility in mind, prime contractors sometimes wish to insert provisions in their subcontracts restricting the subcontractor from competing against the prime contractor on other projects. These provisions, however, sometimes may be invalid—something both prime contractors and subcontractors should know when they are negotiating subcontracts.

Federal Acquisition Regulation clause [52.203-6](#), titled “Restrictions on Subcontractor Sales to the Government,” appears in many federal prime contracts. The clause, in its standard form, says that except for prime contractor rights that are “otherwise authorized by law or regulation,” the prime contractor:

“shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.”

If this provision appears in the prime contract, the prime contractor potentially could not, for example, validly insert a provision in the subcontract requiring that the subcontractor agree not to bid against the prime contractor for the follow-on prime contract. Additionally, FAR 52.203-6 could prohibit the prime contractor from validly imposing broader restrictions, such as prohibiting the subcontractor from selling its products or services to a certain federal agency during the term of the subcontract.

If the prime contract is for commercial items, the prime contract should include the alternative version of FAR 52.203-6. The alternative version of the clause is more

permissive with regard to a prime contractor’s ability to impose restrictive conditions, stating that the general prohibition established in the clause applies “only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial product(s) and commercial service(s).”

Prime contractors often seek to impose contractual restrictions on their subcontractors’ ability to compete against the prime contractor. Both prime contractors and subcontractors should understand that FAR 52.203-6 may affect the validity of such provisions. As always, with respect to legal matters, contractors should consult with their legal counsel about how these provisions could affect their specific circumstances.

NICC APEX ACCELERATOR NEWS YOU CAN USE

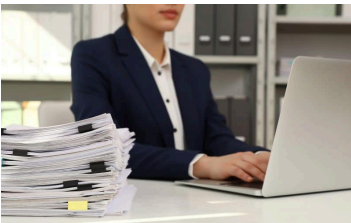
Entity Administrators in SAM

The U.S. General Services Administration, which operates the SAM.gov website, has updated its guidance regarding SAM entity administrators. The updated guidance explains that “SAM.gov grants the Entity Administrator role to the first user to register a non-federal government entity in SAM.gov. When there is an existing Entity Administrator, he or she can invite or assign other users to become an Entity Administrator. Administrator roles cannot be requested.” The updated guidance also provides guidance for how to replace an Entity Administrator if needed. [Review the updated guidance here.](#)

If you’re looking for help registering in SAM for the first time or managing or updating your SAM account, your APEX Accelerator can help! Contact your APEX counselor today to arrange an appointment.

GOVOLOGY WEBINARS

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



DCAA: Accounting System Requirements

Date: January 14, 2025
Time: 1:00 p.m. EST
Presenter: Katelyn Ragle, Defense Contract Audit Agency

[Click Here to Learn More](#)



Doing Business With the Army as a Small Business

Date: January 16, 2025
Time: 1:00 p.m. EST
Presenter: Kimberly Buehler, US Army Small Business Programs

[Click Here to Learn More](#)



An Introduction to Government Small Business Certifications (2025 Update)

Date: January 21, 2025
Time: 1:00 p.m. EST
Presenter: Steven Koprince, Govology

[Click Here to Learn More](#)



Defense Production Act Title III

Date: January 23, 2025

Time: 1:00 p.m. EST

Presenter: Steven Koprince, Govology

[Click Here to Learn More](#)

RECOMMENDED READINGS

How a Trump Presidency Could Impact Government Contracting

A new administration will take the reins in Washington in January. What will the change mean for federal government contractors? [This article takes a look at the potential impact of the new administration](#) in areas including small business contracting, cybersecurity, Buy American and other domestic preference laws, and more.

FAR Council Proposes Increases to Micro-Purchase Threshold, Simplified Acquisition Threshold, 8(a) Sole Source Threshold, and More

The Federal Acquisition Regulation Council has issued a proposed rule to make increases to a number of important FAR dollar thresholds. The FAR Council's proposal, which implements a statutory requirement that the FAR Council review certain dollar thresholds every five years for inflation, would affect frequently-used thresholds like the micro-purchase threshold, simplified acquisition threshold, and 8(a) sole source threshold. The rule would also increase the sole source thresholds for HUBZone, SDVOSB, and WOSB awards. [Read the article here.](#)

A Common-Sense Change to the Continuous SAM Registration Requirement at FAR 52.204 7

The FAR Council has issued a rule to “clarify that an offeror’s failure to maintain System for Award Management (SAM) registration during the period between proposal submission and contract award does not render the offeror ineligible for award.” This change amends the prior “continuous registration” requirement, under which the GAO and Court of Federal Claims had held that a lapse in an offeror’s SAM registration between the dates of bid and award rendered the offeror’s proposal unawardable. [Read the article here.](#)

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 DoD’s CMMC Rule Is Out: What Comes Next?

The CMMC rule is here. What happens now? [This article examines the CMMC rule](#) and its implementation.

The CMMC Clock is Ticking for the Defense Industrial Base

[This article provides another look at the rollout of CMMC](#) across the defense industrial base.

DoD Releases the Final CMMC Program Rule, but Some Updates Still to Come

[This article includes both a write-up of “what happens next” and a visual timeline](#) to help contractors better understand CMMC implementation.

Exploring FOCI Mitigation Efforts (Video)

In this [24-minute video](#), two trade attorneys elaborate on topics involving mitigation of Foreign Ownership, Control, and Influence (FOCI) concerns.

Targeting U.S. Technologies: A Report of Threats to Cleared Industry

The Defense Counterintelligence and Security Agency has published [its annual report](#) “to inform stakeholders of foreign intelligence entity (FIE) efforts to target, compromise, or exploit cleared personnel and/or obtain unauthorized access to classified information or technologies resident in cleared industry and academia” in the most recently-completed fiscal year.

***About Nebraska Indian Community College
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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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