



May 2023 Newsletter



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Tip of the Month:

Two Common Small Business Size Misconceptions

When it comes to federal government contracting, qualifying as a small business can open many doors: set-aside competitions, inclusion in large prime contractors' subcontracting plans, potential eligibility for socioeconomic programs like the 8(a) Program, and others. But determining whether you're small can be trickier than it seems.

Before self-certifying as small, you should carefully review and understand the SBA's small business size rules in [13 C.F.R. Part 121](#). In this newsletter, we'll take a brief look at two very common misconceptions contractors have about qualifying as a small business for federal contracting under revenue-based size standards.^(*)

Misconception #1: Only Revenues In The Primary NAICS Code Count

Many contractors mistakenly believe that when they calculate their small business size, they need only count revenues generated under their primary North American Industry Classification System (NAICS) code. For example, an Information Technology contractor may believe that it should only count revenues generated from contracts classified with NAICS code 541511 (Custom Computer Programming Services) while excluding revenues generated from all other types of work.

While this approach may have some logical appeal, it is not the rule. Under [13 C.F.R. 121.104](#), a company cannot exclude revenues based on the NAICS code in which they were generated. Allowing such exclusions could lead to abuses: imagine Google, a multi-billion dollar behemoth, deciding to bid on a general construction contract and calling itself "small" because it hadn't previously generated revenues in that NAICS code!

Misconception #2: Only Federal Contract Revenues Count

A second common misconception is that a company's size is based only on revenues generated from federal prime contracts. Companies operating under this misconception believe that revenues generated from other types of contracts, such commercial contracts and contracts with state and local governments, can be excluded.

Again, this approach may have some logical appeal, but it is incorrect. According to [13 C.F.R. 121.104](#), no such exclusion is permitted. In fact, the list of permitted exclusions is very narrow. Most contractors aren't entitled to any exclusions at all!

The bottom line: self-certification as a small business requires understanding and due diligence, so carefully review the SBA's regulations before submitting your self-certification in the System for Award Management.

()Most federal contractors, including service contractors and construction contractors, operate under so-called “revenue-based” or “receipts-based” size standards. Others, however, including manufacturers and resellers, may operate under “employee-based” size standards. This newsletter discusses only the former.*

NICC APEX Accelerator News You Can Use:

Forming a Joint Venture? SBA Stresses Importance of Complying With State Law

Forming a joint venture under the SBA's regulations can be tricky enough as it is. However, a recent SBA Office of Hearings and Appeals decision highlights an issue some contractors may neglect while working to comply with the Code of Federal Regulations: complying with applicable state laws, too. Read the article [here](#).

APEX Accelerator Events:

The Buy Indian Act Webinar

Date: May 4, 2023

Time: 2:00p.m. – 3:00p.m. CST

Format: Virtual (zoom)

[Click here to register](#)

The Nebraska Indian Community College APEX Accelerator (formerly known as PTAC) is happy to present a virtual webinar on the Buy Indian Act for our clients.

The Buy Indian Act has purported to help Native American-owned companies secure government contracts since Congress passed it in 1910. But many contractors—including Native-owned contractors—have never even heard of it. That's because, historically speaking, it hasn't been very successful. But that may be changing. We'll discuss the ins and outs of the Buy Indian Act and its associated regulations and help you learn how to make these rules work for you.



NEBRASKA INDIAN COMMUNITY COLLEGE
APEX ACCELERATOR PRESENTS

THE BUY INDIAN ACT

PRESENTED BY MATTHEW MORIARTY at 2PM MAY 4

The Buy Indian Act has purported to help Native American-owned companies secure government contracts since Congress passed it in 1910. But many contractors—including native-owned contractors—have never even heard of it.

That's because, historically speaking, it hasn't been very successful. But that may be changing. We'll discuss the ins and outs of the Buy Indian Act and its associated regulations and help you learn how to make these rules work for you.

Matthew Moriarty

MEMBER
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GovConBrief

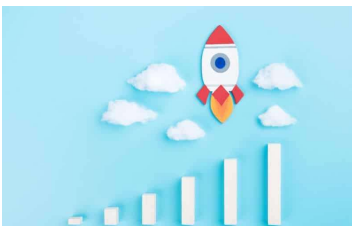
schoonoverlawfirm.com



A virtual event hosted by Nebraska Indian Community College
Register HERE: <https://niccptac.ecenterdirect.com/events/118>

Govology Webinars:

*Please use the new code **20NICC23** when registering for Govology webinars.*



How to Get Your Foot in the Door with Micro-Offers

Date: May 4, 2023

Time: 1:00 pm EDT

Presenter: Carroll Bernard, Govology

[Click Here to Learn More](#)



Keeping Your Contract Award Through Bid Protest Intervention

Date: May 9, 2023

Time: 1:00 pm EDT

Presenter: Maria Panichelli, McCarter & English

[Click Here to Learn More](#)



Winning Strategies and Proven Best Practices for Government Prospecting (2023 Update)

Date: May 16, 2023

Time: 1:00 pm EDT

Presenter: Joshua Frank, RSM Federal

[Click Here to Learn More](#)



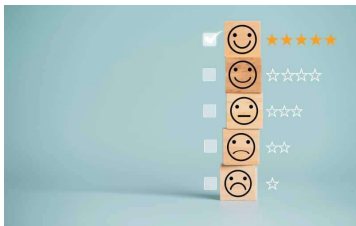
Top 21 Legal Mistakes in Government Contracting (2023 Update)

Date: May 18, 2023

Time: 1:00 pm EDT

Presenter: Nicole Pottroff and Greg Weber, Koprince McCall Pottroff

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Building Your Past Performance Library

Date: May 23, 2023

Time: 1:00 pm EDT

Presenter: Sheila Hamilton, Sheila Lee & Associates – Learning Everywhere®

[Click Here to Learn More](#)



Manufacturers' Guide to the Federal Arena

Date: May 25, 2023

Time: 1:00 pm EDT

Presenter: Patrick Kelly, PK Consulting Services

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Recommended Readings:

SBA Releases Preview of New HUBZone Maps Effective July 1, 2023

In 2021, the SBA “froze” the existing HUBZone maps to give the SBA time to address data collected during the 2020 Census. That freeze will soon expire, meaning that some areas that once were HUBZones may no longer qualify for that status, while current non-HUBZone areas may be added. Many contractors, understandably, are anxious to see what the July maps will look like. SBA recently released a “preview” of its new maps to give contractors a heads-up on what the summer will bring. Read the [full article \(including a link to SBA’s preview maps\) here](#).

HUBZone Appeals Coming Soon

The SBA has released a proposed rule to allow companies to appeal from HUBZone status determinations issued by the SBA’s HUBZone Program Director. Under current law, the “D/HUB’s” decision in a HUBZone protest case cannot be appealed to the SBA’s Office of Hearings and Appeals, even if one party is confident that the decision is erroneous. The new process will provide a potential extra layer of review and should help ensure that HUBZone protest decisions are fair. Read about [the pending rule here](#).

Intel Agencies See ‘Appealing’ Use Cases for OTAs

Intelligence agencies are increasingly making use of other transaction agreements to acquire artificial intelligence tools and other technologies from non-traditional contractors, with civilian spy agencies like the CIA on the cusp of being granted OTA authority. Read more about the [continuing upswing in the use of OTAs here](#).

About Nebraska Indian Community College APEX Accelerator:

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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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