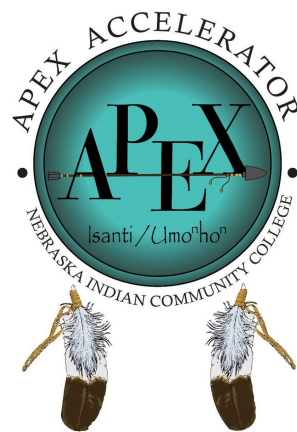


# NEWSLETTER

## May 2025



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### TIP OF THE MONTH

#### Understanding the SBA's Two-Year Joint Venture Restriction

Joint ventures are an increasingly popular form of business for companies pursuing government contracts. But contractors pursuing small business set-aside contracts and/or socioeconomic set-aside and sole-source contracts (such as 8(a) contracts) must strictly adhere to the rules of the U.S. Small Business Administration (SBA). One of the most important SBA joint venture rules—and one that contractors sometimes inadvertently violate—is the so-called “two-year” joint venture rule.

Under the SBA's regulations at [13 C.F.R. 121.103\(h\)](#), a joint venture is intended to be a limited-duration entity. With that in mind, the regulations state that “a specific joint venture generally may not be awarded contracts beyond a two-year period, starting from the date of the award of the first contract, without the partners to the joint venture being deemed affiliated for the joint venture.” Affiliation, in turn, means that the respective sizes of the joint venture's partners are added together when determining whether the joint venture qualifies as a small business for purposes of the contract in question. In many cases, affiliation between the joint venturers will disqualify the joint venture from an award.

Despite the way this regulatory text reads, an example later in the regulation clarifies that a joint venture can receive awards beyond the two-year period, provided that the offer was submitted before the two-year window closed. Therefore, contractors can think of the two-year rule this way: on the date the joint venture wins its first contract, a two-year window opens. During that two-year period, the joint venture can submit an unlimited number of offers and can accept awards stemming from those offers, regardless of whether the award date occurs before or after the two-year window closes. However, if the joint venture submits an offer after the two-year window closes, the joint venture partners will be deemed affiliated.

Joint venture partners operating under the SBA's rules should be very careful about

marking the two-year deadline on their calendars and refraining from submitting offers after the window closes. However, the two-year rule does not mean that partners to the joint venture must forego joint venturing with one another after the two years have passed. Instead, the SBA's rules state that "[t]he same two (or more) entities may create additional joint ventures, and each new joint venture may submit offers for a period of two years from the date of the first contract to the joint venture without the partners to the joint venture being deemed affiliates."

In other words, the two-year rule applies to the joint venture entity—that is, the entity registered in SAM—and not to the joint venture partners. For example, assume that Contractor A and Contractor B form a joint venture, ABJV, LLC. If ABJV, LLC submits an offer after the two-year window closes, Contractors A and B will be deemed affiliated for purposes of the joint venture. However, if Contractors A and B form a new joint venture, ABJV2, LLC, and use that entity to submit offers after the two-year window closes, the rule does not apply.

Joint venturing under the SBA's regulations can be a powerful tool, but it requires strict adherence to the rules, including the two-year rule. As with any legal matter involving government contracting, it is recommended that contractors consult with qualified legal counsel regarding the establishment of joint ventures and compliance with legal requirements.

NICC APEX ACCELERATOR NEWS YOU CAN USE

GSA MAS Contract Holders: Time May Be Running Short to Get Your House in Order

The U.S. General Services Administration (GSA) recently announced a new initiative that “put its Multiple Award Schedule (MAS) contractors on notice that it is making ‘major changes’ to ‘improve the effectiveness of the MAS Program’ by allowing contracts that fail to meet sales thresholds to expire, addressing contractor noncompliance, reducing redundancies with other procurement channels and eliminating low-demand items that ‘fail to deliver meaningful procurement benefits.’”

With this in mind, it is a good time for GSA Schedule contractors to review their Schedule contracts to examine compliance with annual sales thresholds, consider the removal of underperforming items, and consider adding new items. [Read more about the GSA's initiative.](#)

Are you interested in learning more about the GSA Schedule program and how it could benefit your company? Alternatively, if you are already familiar with the GSA Schedule, are you interested in learning how to utilize it more effectively? Your APEX Accelerator can help! Contact your APEX counselor today to schedule an appointment.

GOVOLOGY WEBINARS

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



Termination Settlement Proposals

**Date:** May 13, 2025

**Time:** 1:00 p.m. EDT

**Presenter:** Jacob Barclay, Barclay Group LLC

[Click Here to Learn More](#)



## Small Business Size Standards and Affiliation: Lessons for Every Federal Contractor

**Date:** May 15, 2025

**Time:** 1:00 p.m. EDT

**Presenter:** Shane McCall and Greg Weber, Koprince McCall Pottroff, LLC

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## Methods for Communicating Your Past Performance to Accelerate Government Sales (2025 Update)

**Date:** May 20, 2025

**Time:** 1:00 p.m. EDT

**Presenter:** Joshua Frank, RSM Federal

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## Addressing Tariffs: Key Considerations for Government Contractors

**Date:** May 22, 2025

**Time:** 1:00 p.m. EDT

**Presenter:** Steven Koprince, Govology Legal Analyst

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## Prospecting for Government Market Opportunities (2025 Update)

**Date:** May 29, 2025

**Time:** 1:00 p.m. EDT

**Presenter:** Carroll Bernard, Govology

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## RECOMMENDED READINGS

### Money Talks: CEO's IRA Withdrawal Results in 8(a) Program Denial

Qualifying for the 8(a) Program requires a showing of "economic disadvantage." While qualified retirement funds are often excluded from the SBA's economic disadvantage analysis, tapping into those retirement savings can cause the SBA to consider them. [This article](#) takes a look at a recent case in which a CEO's decision to pull funds from his IRA caused the SBA to deny his company's 8(a) application.

### Executive Order Aims to Consolidate Procurement of Broadly Defined 'Common Goods and Services', All IT GWACs, under GSA

The President has issued a new executive order aimed at consolidating the procurement of certain "common goods and services" under the General Services Administration. [What will this mean for contractors?](#)

### Trump DEI Executive Orders – Impacts on Small Businesses and Small Business Subcontracting

The President's DEI executive orders will have an impact on many small business prime contractors and subcontractors. [This article](#) examines the executive orders, the SBA's response to the executive orders, and what it all means for small businesses.

## 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.

### **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.

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### **National Defense Authorization Act, Section 847**

The Defense Counterintelligence & Security Agency has published important new information about the ongoing implementation of Section 847 of the 2020 National Defense Authorization Act. As DCSA writes, Section 847 would require a FOCI analysis of covered DoD contractors or subcontractors with a contract in excess of \$5 million or more, regardless of whether the contract requires access to classified information. Section 847, therefore, will be “an expansion of existing FOCI vetting requirements to pre-award contract activities and unclassified contracts.” Regulations implementing Section 847 are expected by 2026. [Read more about these changes here.](#)

### **CMMC Review, Multiuse SCIFs on Radar of DoD Acquisition Nominee**

The nominee for the Pentagon’s top acquisition job says [he’ll review the Cybersecurity Maturity Model Certification program](#), as the Defense Department works to finalize the sweeping CMMC requirements.

### **Major Contractors Close In on CMMC 2.0 Readiness**

Major federal contractors are positioning themselves to provide advisory and managed compliance solutions that adhere to the [Cybersecurity Maturity Model Certification 2.0](#) before it’s required in contract language later this year.

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

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**E-mail us:** [APEX@thenicc.edu](mailto: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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