

NEWSLETTER

November 2023



Share



Tweet



Forward



Share

TIP OF THE MONTH

Who Can Modify a Federal Government Contract?

When a contractor is working on a federal project, a government official may order or suggest that the contractor make a change – an increase or decrease in scope of work, a change to the time or place of performance, and so on. Often, changes cost the contractor time, money or both. But if the government official who ordered the change wasn't authorized, the contractor may go unpaid.

Contractors often assume that anyone who carries a government business card is authorized to change the contract. This assumption goes double for Contracting Officer Representatives (CORs). Often, the COR is the government administrator the contractor deals with most frequently.

Contrary to this common assumption, FAR 1.602-1(a) says:

Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority . . . clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.

What about the COR? In contrast to the authority allocated to the Contracting Officer, FAR 1.602-2(d) explains that a COR "Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract nor in any way direct the contractor or its subcontractors to operate in conflict with the contract terms and conditions."

In short, only a Contracting Officer acting within the scope of his or her authority has the power to modify a federal contract. Neither a COR nor any other unauthorized official, regardless of the business card the official carries, can issue or approve a modification.

In the commercial world, the doctrine of “apparent authority” may bind a business to commitments entered by people who appeared to have authority to act on behalf of the business. Not so in federal contracting. If a contractor follows the order or suggestion of an unauthorized official, the contractor performs at *risk*, that is, the contractor takes the risk of nonpayment for the costs of making the change.

Sometimes, an authorized government official retroactively approves unauthorized commitments, in a process known as “ratification.” The government isn’t required to ratify unauthorized commitments, however, and the case law in the federal courts and Boards of Contract Appeals is full of examples of contractors who followed the directions of an unauthorized official and ended up absorbing the costs—in some cases, to the tune of several hundred thousand dollars.

As a contractor, it can be difficult to say “no” to a government official like a COR. But seeking the Contracting Officer’s prior approval for any changes directed by an unauthorized official ordinarily is the only safe way to ensure that you won’t be left hanging.

NICC APEX ACCELERATOR NEWS YOU CAN USE

SBA Reopens 8(a) Program Applications

On September 29, the SBA reopened its online portfolio and began accepting new applications for the 8(a) Business Development Program. The SBA temporarily suspended 8(a) applications in July following a federal court decision requiring the SBA to discontinue treating certain individuals as “presumed” socially disadvantaged. The 8(a) application now requires all businesses owned by individuals (as opposed to businesses owned by entities such as Indian tribes) to demonstrate that the individual or individuals who control the business have personally experienced social disadvantage. Read more about the [8\(a\) Program and application process](#).

If you’re interested in the 8(a) Program or other socioeconomic certifications, your APEX Accelerator can help! Schedule an appointment with your APEX counselor to discuss certifications, eligibility, and the application process.

Time Is Running Out for Self-Certified Veteran and Service-Disabled Veteran-Owned Small Businesses

Effective January 1st, 2024, self-certified firms must secure formal certification from the SBA to participate (and be eligible for award) in veteran (and service-disabled veteran) owned small business set-aside and sole-source contracting opportunities. According to 13 CFR 128.200(c), a company may pursue contracts in the new year without a certification, but ONLY if they submit a complete application before Dec. 31, and only while the SBA is processing the application.

As of 10/11/2023, according to the SBA's Dynamic Small Business Search Database ([DSBS.SBA.GOV](#)), there are currently 82,537 self-certified veteran-owned small businesses (VOSBs) listed in the database. Of these self-certified firms, only 18,947 service-disabled veteran-owned businesses (SDVOSBs) have an active certification (less than 23%), and only 5,692 VOSBs show an active certification (less than 7%). If you are among this number of self-certified VOSBs & SDVOSBs, we encourage you to take action now to get your formal certification through the SBA. The link to the official application portal for VOSB (including SDVOSB) certification is <https://veterans.certify.sba.gov/>.

Preparation is the key to success! We encourage you to watch Govology's on-demand webinar, "[A Step-By-Step Guide to Registering as a Veteran-Owned Small Business](#)," and contact your local APEX Accelerator counselor if you have additional questions or need assistance.

APEX ACCELERATOR EVENTS

Honoring Native American Veterans: Business Resources and Opportunities

Date: November 14, 2023

Time: 10:00 AM - 11:00 AM Central

Location: Virtual

[Click here to register](#)

Join us for a free, one-hour webinar celebrating National Native American Heritage Month and honoring the contributions of Native American Veterans in entrepreneurship. Hosted by the U.S. Small Business Administration Kansas City District, Nebraska Indian Community College Native APEX Accelerator, and VetBiz, this event will provide insights, resources, and inspiring stories for Native American veterans and aspiring entrepreneurs. Attendees will learn about programs and resources to empower entrepreneurs, hear from a successful Native American veteran business owner, and engage in a Q&A session. This event is ideal for Native American Veterans, veteran entrepreneurs, aspiring entrepreneurs, small business owners, and anyone interested in supporting Native American and veteran-owned businesses. Register today to secure your spot!

GOVOLOGY WEBINARS

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



Prospecting for Government Market Opportunities (2023 Update)

Date: November 2, 2023

Time: 1:00 PM EDT

Presenter: Amber Stevens, GovCon Advisors

[Click Here to Learn More](#)



Going Green: Smart Manufacturing, EV Tech, and Green Development in the FAR

Date: November 14, 2023

Time: 1:00 PM EST

Presenter: Matthew Moriarty, Schoonover & Moriarty LLC

[Click Here to Learn More](#)



An Introduction to Multi-Year Federal Contracting Vehicles (2023 Update)

Date: November 16, 2023

Time: 1:00 PM EST

Presenter: Shana Nicholson, Rescue Me LLC

[Click Here to Learn More](#)



How to Competitively Respond to a Sources Sought and Influence the Acquisition (2023 Update)

Date: November 21, 2023

Time: 1:00 PM EST

Presenter: Joshua Frank, RSM Federal

[Click Here to Learn More](#)



An Introduction to Government Small Business Certifications (2023 Update)

Date: November 28, 2023

Time: 1:00 PM EST

Presenter: Steven Koprince, Govology

[Click Here to Learn More](#)

RECOMMENDED READINGS

Contractors Gain New Opportunity to Provide Acquisition Feedback

Federal government contractors are used to being evaluated by the government, often in the Contractor Performance Assessment Reporting System (CPARS). Now, taking a cue from the notion of “360 performance reviews,” the FAR Council has adopted a new rule to encourage offerors to provide actionable feedback to federal buyers on the acquisition process. [Read more about the new rule.](#)

ASBCA Provides Guidance on How Deductive Changes Should Be Priced

It's an unfortunate reality of federal contracting that sometimes an agency will decide to reduce the amount of work ordered from the contractor. These changes, sometimes called “downscopes” or “deductive modifications,” may entitle the government to a price reduction, too – but how much of a reduction? In a new case, the Armed Services Board of Contract Appeals provides guidance for pricing deductive changes. [Read more about the case.](#)

Seven Arrested for Allegedly Defrauding HUBZone Program

The Department of Justice (DOJ) has announced that seven individuals have been arrested and charged with defrauding the HUBZone Program. According to the DOJ, two of the alleged co-conspirators recruited family and friends to serve as “fake employees” of HUBZone companies. Each fake employee then paid a 20 percent kickback to the ringleaders. [Read more about the allegations.](#)

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 you read the latest edition of the [DOD's Small Business Digest](#) if you want to do business with the Department of Defense.

CMMC/Cybersecurity Compliance Resources

[DOD CMMC Resource Page](#) - Resources to assist government contractors in 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 of interest for those interested (or currently engaged) in doing business with the DOD.

CMMC & FOCI News of Note

NDAAs Continue Trend of Supply Chain Vigilance to Reduce Reliance on China

This year's House and Senate proposals for the annual National Defense Authorization Act "continue the trend of vigilance of defense-critical supply chains to reduce the Defense Department's reliance on China, Russia and other so-called "countries of concern."" [Read the article here.](#)

What Do the Newly Released CMMC 2.1 Documents Mean?

What are the important takeaways from the most recently released CMMC program documents? This podcast "breaks down assessment guides and the scoping guidance for CMMC Levels 1, 2 and 3." [View the podcast here.](#)

About Nebraska Indian Community College APEX Accelerator:

Address (Macy Campus):

1111 Hwy. 75/P.O. Box 428
Macy, NE 68039
(Coverage Area: Omaha Indian Reservation)

Address (Santee Campus):

415 North River Road
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.

Copyright © 2023 Nebraska Indian Community College APEX Accelerator, All rights reserved.

Want to change how you receive these emails?
You can [update your preferences](#) or [unsubscribe from this list](#)

