



Newsletter

October 2022



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Announcement:

The NICC PTAC team will resume office hours in White Cloud, Kansas during the month of October 2022! Please contact our team at PTAC@thenicc.edu if you are interested and would like to schedule an appointment for PTAC assistance.

Tip of the Month:

Can the Government Unilaterally Change a Contract?

If you ask a room of contractors whether the federal government can unilaterally change a prime contract, many – perhaps most – will say “yes.” The truth, however, is a little more nuanced.

Contrary to a common misconception, the government does not always have the right to unilaterally change a contract. Rather, the government’s rights depend on the type of contract and what Federal Acquisition Regulation (FAR) clauses are included.

Many government contracts are classified as “commercial” contracts. Under the FAR, the term “commercial” encompasses more than just commercially-available, off-the-shelf items, like the proverbial widget. Instead, FAR 2.101 defines “commercial” to include a wide variety of products and services.

If you’re not sure whether the government has classified your contract as commercial, it’s easy to find out. Just check the contract’s cover sheet: a commercial contract ordinarily will include Standard Form 1449 (Solicitation/Contract/Order for Commercial Products and Commercial Services). If the cover sheet is unclear or missing, check the contract for FAR 52.212-4 (Contract Terms and Conditions). If it’s included, you’ve got a commercial contract.

The government’s classification of a contract as commercial has many ramifications, including when it comes to the government’s right to impose a unilateral change. As mentioned above, a commercial contract should contain FAR 52.212-4. This clause may be spelled out in full text or simply included by reference, but either way, it forms an integral part of a commercial contract.

Why does the commercial classification matter when it comes to unilateral changes?

Paragraph (c) of FAR 52.212-4 succinctly states:

“(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.”

As you can see, FAR 52.212-4(c) is clear: a commercial contract cannot be changed unless both parties agree. In other words, despite a common misconception, the government does not have the right to unilaterally change a commercial contract!

But what if your contract isn't commercial? Can the government make a unilateral change then?

For most contracts, the answer is “yes,” but the government's rights are more limited than you may think.

When a contract is non-commercial, the contract typically will include a specific clause governing changes. These clauses vary by contract. For example, a fixed-price contract for supplies generally will contain FAR 52.243-1 (Changes–Fixed Price), whereas most contracts for construction will contain FAR 52.2431-4 (Changes). Unlike FAR 52.212-4, these clauses do allow for unilateral changes, but importantly, they require that any change – including a unilateral change – be within the “general scope of the contract.”

This restriction prohibits the government from imposing so-called “cardinal changes.” A cardinal change is one so drastic that it effectively requires the contractor to perform duties materially different from those originally bargained for.

Unfortunately, there is no bright-line test for when a change crosses the line from acceptable to “cardinal.” Instead, the courts and Boards of Contract Appeals have addressed the matter on a case-by-case basis. If you believe that a change to your contract may be an impermissible cardinal change, your PTAC counselor may be able to help you evaluate the issue.

Finally, it's worth noting that although the government usually has the right to make unilateral changes to non-commercial contracts, many contracting officers prefer not to exercise that right. After all, unilateral changes can be quite unpopular with contractors!

Instead, to help avoid anger, frustration, and disputes, many contracting officers, as a matter of practice, attempt to negotiate a bilateral change before imposing a unilateral change. In other words, if the government wants to change your non-commercial contract, there's a good chance (although no guarantee) that the government will try to get your agreement upfront.

PTAC News You Can Use:

The Department of Defense has issued a final rule to reauthorize and improve the DoD Mentor-Protege Program. The final rule extends the date for entering into a mentor-protégé agreement, extends the date for reimbursement of mentors, limits the term for program participation, extends the date for a mentor to receive credit toward the attainment of small business subcontracting goals, and expands eligibility for protégé firms. Read the final rule [here](#). If you would like to learn more about the DoD Mentor-Protege Program or receive assistance with an application, schedule time to talk with your PTAC counselor.

PTAC Events

Nebraska Business Development Center Meet the Buyers Conference

Date: October 18 - 20, 2022

Time: 8:00 AM – 4:30 PM

Location: Hampton Inn & Suites Scottsbluff, 301 US-26, Scottsbluff, NE 69361

[Click here to register](#)

Meet the Buyers Scottsbluff is a three-day government contracting experience for businesses to advance their contracting knowledge, connect with other business owners, and network directly with agency representatives. Register now for the opportunity to market your product/service to this network.

The NICC PTAC team members Mike & Harold will be in attendance with a booth available for Native-owned & tribally owned businesses.

Meet the Buyers - Council Bluffs

Date: Wednesday, November 16, 2022

Time: 8:45 AM - 12:00 PM CT

Location: Holiday Inn Council Bluffs, 2202 River Road, Council Bluffs, Iowa 51501

[Click here to register](#)

This is a free event hosted by the Center for Industrial Research and Service (CIRAS) at the Iowa State University.

Meet the Buyers is an experience where businesses can network and develop relationships with State/Local and Federal government agencies, prime contractors, and other businesses in the government contracting space.

The morning will include short briefings from each agency highlighting how to do business with them followed by an opportunity to network. Use this event to practice your elevator speech, disperse your capability statement and find teaming partners. The event will wrap up with a 30-minute Q&A panel of best practices when marketing to agencies or primes.

Featured Agencies:

- U.S. Army Corps of Engineers: Omaha District
- Iowa Dept. of Administrative Services (DAS)
- Douglas County/City of Omaha, Nebraska
- The University of Nebraska
- Small Business Administration
- Southwest Iowa Planning Council / Southwest Iowa Transit Agency (SWIPCO/SWITA)
- Nebraska Enterprise Fund
- Ponca Economic Development Corporation - Procurement Technical Assistance Center (PEDCO PTAC)
- Iowa Economic Development Authority
- Sioux City Transit System

For more event details, contact Justin Niceswanger at jnice@iastate.edu.

The NICC PTAC team members Mike & Debra will be in attendance with a booth available for Native-owned & tribally owned businesses.

The U. S. Department of the Interior Bipartisan Infrastructure Law (BIL) Virtual Industry Day

Date: Tuesday, October 18, 2022

Time: 2:00 PM - 4:30 PM Eastern Time

Format: Virtual/Online

[Click here to register](#)

Dear Small Business and Financial Assistance Communities:

On behalf of the U.S. Department of the Interior (DOI), the Office of Small and Disadvantaged Business Utilization (OSDBU) and the Office of Grants Management, we are inviting you to attend the U. S. Department of the Interior Bipartisan Infrastructure Law

(BIL) Virtual Industry Day.

The BIL Industry Day will include a presentation from nine DOI Bureaus and Offices who will share information on Fiscal Year 2023 BIL related contracting and financial assistance opportunities, followed by each Bureau/Office hosting a breakout room where participants can join, ask questions, and engage directly with DOI Bureaus/Office representatives.

THIS EVENT IS FREE! To promote the capabilities of small business vendors, increase awareness of downstream contracting opportunities as a result of DOI financial assistance awards, and facilitate partnerships between Small Businesses and the Financial Assistance Community, a listing of event registrants (names, organizations, email addresses) will be made available to all registrants after the event. For more information about this event or if you have questions about physical access, need handouts in alternate format, require American Sign Language (ASL) interpretation, Live Captioning, or other reasonable accommodations to participate, please contact DOI_OSDBU@ios.doi.gov. Please request special accommodations by October 14, 2022, so that arrangements may be made.

A message to our NICC PTAC Clients:

We have been in Monthly Discussions with BIA and IHS with regards to the Buy Indian Act and how this program will work. The Discussions have been centered around the IEE and ISBEE certifications. This is a button you click on in your SAM.gov Profile. Once you have those certifications you are put on a short list that is available to the Kos within those 2 agencies for services, they need to receive an advantage in the bidding process.

There have been discussions about implementing this same type of process across the Department of Interior. This event is a result of that process, and this event will explain the results of those discussions and how each agency is planning to implement those changes. I cannot express to you how important this event is. Please register and become aware of the opportunities available to you in real time.

Please let me know your thoughts.

Sincerely,

Michael D Channell

Govology Webinars

Please use the new code 2202NICC when registering for Govology webinars



Strategic Pricing – Key Gov Con Processes and Strategies

Date: October 4, 2022

Time: 1:00 pm EDT

Presenter: Marsha Lindquist, Granite Leadership Strategies Inc.

[Click Here to Learn More](#)



Becoming a NASA SEWP Industry Provider

Date: October 11, 2022

Time: 1:00 pm EDT

Presenter: Marc Wishnow, NASA Solutions for Enterprise-Wide Procurement Program

[Click Here to Learn More](#)



Communicating with Government Contracting Officials: What Can (and Should) Contractors Really Say and Do?

Date: October 20, 2022

Time: 1:00 pm EDT

Presenter: Shane McCall, Koprince McCall Pottroff LLC

[Click Here to Learn More](#)



Doing Business with the Army as a Small Business

Date: October 25, 2022

Time: 1:00 pm EDT

Presenter: Kimberly Buehler, US Army Small Business Programs

[Click Here to Learn More](#)

Recommended Readings:

Last Call for VA Verification (or Re-verification If Applicable) & Important Deadline

The VA has just released a memorandum with important information regarding actions VA-verified veterans must take if their current verification expires before the verification program moves from the VA to the SBA on January 1st, 2023. Veterans requiring re-verification and any new applicants seeking verification must submit their applications to the VA no later than 5:00 PM Eastern Daylight Time on October 24th, 2022. [Click here](#) to read the full memorandum for additional details.

Federal Court Confirms Strict SDVOSB Ownership Requirements

To qualify as a service-disabled veteran-owned small business for federal government contracts, one or more veterans must hold “unconditional” ownership of at least 51% of the company. A recent federal court decision confirms that the term “unconditional” is interpreted strictly. In the case, a company’s governing documents included a “right of first refusal,” that is, a provision stating that if one of the owners wanted to sell their share in the company, it must first be offered to the other owner before going on the open market. The court concluded that this provision restricted the veteran’s right to dispose of his ownership stake, thus failing the “unconditional” test.

Provisions like the right of first refusal are commonplace in corporate documents, so the court’s decision is a good reminder to carefully review your governing documents to ensure they comply. Read more about the case [here](#).

5 Things Every First-Time Bidder for Federal Contracts Should Know

If you’re new to the federal contracting landscape, it can be a bit overwhelming. This article provides five big-picture tips to help you on the road to success – from building strong relationships to staying patient. Read the article [here](#), and don’t forget a sixth important tip for success: work regularly with your PTAC counselor!

Cyber Accreditation Body Says Key CMMC Document to Face Changes

Facing heavy criticism from industry, the Cybersecurity Maturity Model Certification (CMMC) Accreditation Body will release a revised document for the assessment process. The Accreditation Body released a draft process document in late July, but backlash from contractors came swiftly. Industry representatives described the draft as overly complex and burdensome, particularly for small businesses. Read the article [here](#), and contact your PTAC counselor for more information about CMMC.

About Nebraska Community College PTAC:

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