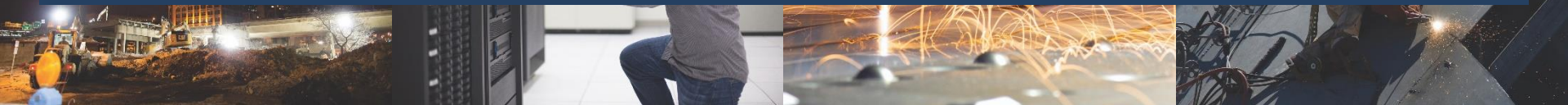




A Procurement Technical  
Assistance Center (PTAC)

A photograph of the Wisconsin State Capitol building at dusk. The building is illuminated with warm lights, and its green dome is a prominent feature. The sky is a deep blue, and trees with autumn foliage are visible in the foreground.

# RECENT REGULATORY CHANGES FOR SMALL BUSINESS – PART ONE: AFFILIATION Webinar – August 18, 2016





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# National Defense Authorization Act: New Rules of Affiliation

August 18, 2016

Presented by Emily Constantine

# Understanding Affiliation

- Identifying “affiliates” is critical in identifying whether an entity or concern meets the requirements for a small business concern eligible for SBA assistance
  - The focus is on the power to control and involves a fact-intensive analysis of ownership, management, and contractual relations
  - Size is determined by evaluating measures such as receipts and employees of both foreign and domestic, as well as for-profit and not-for-profit, affiliates

# Presumption of Affiliation

- Affiliation can also be found based on “identity of interest”
  - When firms or individuals have “identical or substantially identify business or economic interests,” they can be “treated as one party with such interests aggregated”
  - This presumption can be overcome, however, by showing that these interests are separate

# New Rule Regarding Affiliation and Identity of Interest

- The new rule created bright-line tests for determining identity of interest based on either relationships or economic dependence
  - It did not fundamentally alter standing practice; rather, it codified precedent set and followed by the Office of Hearings and Appeals

# Personal/Familial Relationships

- If the firms are owned or controlled by a married couple, individuals joined by civil union, parents, children, or siblings, they are presumed to have an identity of interest if they conduct business with each other
  - Examples includes “subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees”
- This presumption can be rebutted by establishing “a clear line or fracture between the concerns”
- It is important to note that other types of relationships (e.g., cousins, grandparents) do not create such a presumption

# The 70% Rule

- An identity of interest may also be presumed on the basis of economic dependence if the concern derived at least 70% of its receipts from another concern over the prior three fiscal years
  - This presumption can be overcome by showing that the concern in question is not, in fact, wholly dependent on the other
  - A business concern owned and controlled by (or a wholly-owned entity of) an Indian Tribe, ANC, NHO, or CDC is not considered to be an affiliate of another concern owned by that entity based only on the existence of a contractual relationship

# The 70% Rule: Overcoming the Presumption Example

- If the firm in question is fairly new, for example, and only has two or three contracts—one of which is greater than 70% of its receipts—this presumption will likely be rebutted (absent other evidence of affiliation or identities of interest) because the firm has been in business for only a brief amount of time and presumably has not had the opportunity to secure a large number of contracts

# Affiliation and Joint Ventures: Definition

- “A joint venture is an association of individuals and/or concerns with interests in any degree or proportion consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally.”

# Affiliation and Joint Ventures

- Generally, entities in a joint venture will be considered affiliates if any one of them seeks financial assistance from the SBA
  - There is an exception, however, if the joint venture submits an offer as a small business for federal procurement and each individual business concern is considered small under the applicable standard related to the NAICS code assigned to that contract
  - The new rule eliminated the requirement that the proposed procurement be bundled or large

# Affiliation and Joint Ventures: Old Rule vs. New Rule

- The new rule eliminated the requirement that the proposed procurement be bundled or large
  - Previously, the procurement must have been considered bundled or consolidated or, if not bundled/consolidated, must have been valued at least \$10 million for employee-based size standards or at least half the size standard corresponding to the NAICS code assigned to the contract for receipts-based size standards

# Implementation

- The new rule became effective June 30, 2016

# Upcoming WPI Events

- ***Webinar: Recent Regulatory changes for small business Part 2-August 25, 2016***
- ***Acquisition Hour Live Webinar Series - Tuesdays and Wednesdays***
- ***Small Business Contracting Series – September 15, 2016, October 13, 2016, and December 15, 2016 – Milwaukee, WI***
- ***Fort McCoy Acquisition Open House – October 18, 2016 – Fort McCoy, WI***
- ***Marketplace 2016 – November 16 - 17, 2016 – Milwaukee, WI***

**questions?**

# Continuing Professional Education



CPE Certificate available, please contact:

**Benjamin Blanc**

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# Survey



# For Assistance or Additional Information - Contact

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