

# UPDATES NEW FEDERAL AND SBA REGULATIONS

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SAME PHOENIX POST

APRIL 17, 2025

Wigwam

Presented by  
Michelle Kantor, Esq  
McDonald Hopkins, LLC



# Presented by

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  - Joint Ventures, Teaming and Mentor Protégé submissions
  - Mergers/Acquisitions/Succession Planning/Corporate Law
  - Employment Law/Restrictive Covenants and Non-Compete
  - SBA Certificate of Competency (“COC”)
  - REA, Claims and Contract Disputes
  - Government Investigations responses and compliance



## *RECENT SBA RULES AND OTHER FEDERAL LAWS*

***NEW TEAMING, JOINT VENTURES  
& MENTOR PROTÉGÉ JV  
REGULATIONS***



# JOINT VENTURE SAM REGISTRATION

- FAR clauses 52.212-3 and 52.219-1 all small business joint ventures pursuing federal contract work
- Must register in SAM
- This means acquiring unique entity identifier for each party to the joint venture.
- Make sure all information is accurate including Reps and Certs

## NEW CASE JUST DECIDED ON SAM REGISTRATION AND REPS AND CERTS

- ASTI vs. US., SOFIS vs. US. COFC – April 14, 2025
- Bid protest concerned a set-aside procurement for WOSB to train Air Force drone pilots. Solicitation required firms to certify themselves as WOSBs in the SAM and further obligated firms to include their SAM certifications with their proposals. After evaluating proposals, the Air Force excluded two companies—ASTI and SOFIS”) — for SAM-related mistakes. Both companies protested.
- Since both proposals were not responsive, both ASTI and SOFIS were eliminated from competition.
- Here, ASTI did not include its Joint Venture SAM registration.
- Had an active SAM registration, but reflected ASTI WAS NOT a WOSB at when proposals were due. ASTI maintained this was minor or clerical error.

## NEW CASE JUST DECIDED ON SAM REGISTRATION AND REPS AND CERTS

- SOFIS's proposal did contain its SAM registration, but its SAM lapsed and was inactive for 5 days
- However, FAR 52.204-7 required offerors to be registered in SAM when submitting offer and “continue to be registered until time of award.”
- SOFIS also argued that the FAR Council's recent amendment regarding allowances of lapse in certification, should be applied retroactively and allow SOFIS back in.
- COFC granted the Defendants—the United States and intervenor Metro Accounting and Professional Services, LLC (“Metro”) judgment on the administrative record.



# ***UPDATES ON JOINT VENTURE RULES***

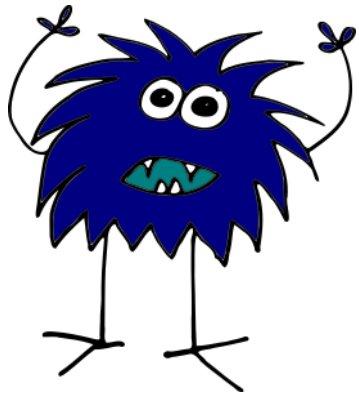


## ***NEW SBA RULE: PROHIBITION ON MENTORS SUBMITTING COMPETING OFFERS FROM PROTÉGÉS***

- Prior SBA rules silent on whether mentor that has more than one protégé can submit competing offers on the same solicitation
- New SBA final Rule - Clarifies that a mentor that has more than one protégé cannot submit competing offers in response to a solicitation for a specific procurement through separate joint ventures with different protégés
- What about one proposal with each protégé on a multiple award contract in different business pools - WOSB, SVOSB, 8(a), small?
- FINAL RULE EFFECTIVE MAY 2023

# SBA RULES ON AFFILIATION

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- Consequence of Affiliation:
- Gross Receipts and finding of other than small –  
OTS
- Further consequences

- A small business JV can be awarded unlimited contracts within the 2 year period
- Time Clocks starts from the date of first award
- Discussion Task Orders vs. Contracts
- What happens after the two-year period?
- Consequence of bidding on new contracts after two years – Affiliation Discussion....

- In Dec. 2020, Naval Facilities Engineering Command issued for architect and engineer services for Geographic Information Systems and Professional Surveying and Mapping within the
- SBA OHA affirms SBA Area Office finding that firm was other than small and affiliated because joint venture violated the "unlimited in two" rule by continuing to seek awards more than two years after first award to joint venture

# Size Appeal – 2 YEAR RULE

- Size Appeal of Hometown Veterans Medical LLC, April 6, 2025
- SBA's OHA held that, the members of a joint venture were affiliated by having submitted an offer more than two years after the award of the first contract to the JV
- Even though the initial award was terminated for convenience prior to performance
- Note:
  - Reported in March 2025, over 10 thousand contracts terminated for convenience including USAID, FEMA and VA
  - Important to remember if you had recent contracts that were T4C and bid as a joint venture.

# JOINT VENTURE JOINT VENTURE CONTROL HUGE CHANGES

- Rule: 124.513 (c )
  - *The managing venturer is responsible for controlling the **day-to-day management and administration of the contractual performance** of the joint venture, **but other partners to the joint venture may participate in all corporate governance activities and decisions of the joint venture as is commercially customary.***
- New Governance allowance participation
- New OHA case law interpreting what is allowable by the minority percentage owner regarding “control” allowances
- Can open up can of worms: super-majority voting issues
- Suggest consulting with APEX, SBA or legal counsel for guidance under rules.



# Size Appeal - JV Control (2023)

- Appeal from Size Protest: *Size Appeal: Defense Integrated Solutions, LLC*,
- SBA OHA found that the JV agreement failed to comply with the JV regs because it required mutual consent of the venturers to initiate and settle litigation“ which gave the non-SDVOSB venturer impermissible negative control beyond extraordinary circumstances.”
- COFC reversed the SBA OHA's decision, holding that under 13 C.F.R. § 125.18(b)(2)(ii)(A) an SDVOSB joint venture agreement may provide that a non-managing partner must approve (or may veto) claim and litigation decisions.

# JOINT VENTURE CONTROL CHANGE

- UPDATED FINAL RULE LANGUAGE CHANGES 2025
- *The managing venturer is responsible for controlling the day-to-day management and administration of the contractual performance of the joint venture, but other partners to the joint venture may participate in all corporate governance activities and decisions of the joint venture as is commercially customary. The joint venture agreement may not give to a non-managing venturer negative control over activities of the joint venture, unless those provisions would otherwise be commercially customary for a joint venture agreement for a government contract outside of SBA's programs. A non-managing venturer's approval may be required in, among other things, determining what contract opportunities the joint venture should seek and initiating litigation on behalf of the joint venture.*
- Still can of worms - super-majority voting issues

- Example 124.513(c) The JVA must
  - *Designate the 8(a) Participant as the managing venturer of the joint venture, and designate a named employee of the 8(a) managing venturer as the manager with ultimate responsibility for performance of the contract (the “**Responsible Manager**”).*
- Be precise, don't just name someone without a commitment

## **SIZE APPEAL SYSCOM, INC.**

### **MARCH 2023**

- On December 9, 2021, the USAF issued RFQ for refuse and recycling services set aside to 8(a) firms.
- Size Protest was filed challenging eligibility of a Mentor-Protégé Joint Venture (JV)
- JV was organized under Michigan law. Articles of Organization indicated LLC had no designation as to the identify of Manager or Managing Member of the JV. The JV had no operating agreement.
- However, under Michigan law provides that management is vested in the members unless otherwise provide in the articles of organization or operating agreement.
- Appeal Decision: No evidence as to who is designated as the Managing Venturer and “inconsistent with Michigan law, which statutorily vests management of an LLC in all of its members.
- **Tip: Re-use of other JV agreements**

## SBA SIZE APPEAL: FOCUS REVISION PARTNERS 2023

- Solicitation for A&E services in support of FEMA's Risk Mapping, Assessment, and Planning program
- Protest against awardee that was a JV under SBA MP program
- JVA was drafted, several years before the solicitation was issued.
- OHA determined “without the JVA Addendum,” the JVA did not contain sufficient detail to meet the JV regulatory requirements
- The “JVA made references to a “Contract,” but current contract bid was an unrelated procurement by USACE.
- The JVA Addendum **was unsigned and not created until after the date of the final proposal revisions:**

# ***SBA MENTOR PROTÉGÉ PROGRAM – NEW & IMPORTANT RULES***

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# JOINT VENTURE PAST PERFORMANCE



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- JV Partner Capabilities, Past Performance, and Experience
- 13 CFR 125.8(e)
- A procuring activity must consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously.
- Agency may Not require the protégé firm to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. **The partners to the JV in the aggregate must demonstrate the past performance, experience, business systems and certifications necessary to perform the contract.**



# PAST PERFORMANCE NEW CASE THAT TRIGGERED NEW 2025 RULE

- Due to a recent case *SH Synergy, LLC v. United States*, 165 Fed. Cl. 745 (2023), that SBA felt it must clarify confusion as to what past performance a procuring activity can require of a protégé joint venture partner and how that past performance should be evaluated.
- SBA's final rule clarifies that a contracting officer may rely solely on the past performance and experience of the mentor joint venture partner in its discretion.
- Final Rule also adds language that if a contracting officer requires a protégé joint venture partner to demonstrate some successful performance and/or experience on fewer previous contracts of lower values than that required of other offerors generally, successful performance by the protégé firm on the contracts it identifies shall be rated equivalently to successful performance by the mentor partner to the joint venture or any other individual offeror on the higher valued contracts they identify



# ***MULTIPLE BIDS***



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- Mentor has two proteges and encourages each to bid on same solicitation as a JV with Mentor as the JV partner
  - Anything wrong with that?
- Mentor SB wants to bid the project on its own as prime and intends to submit a second bid with the protégé as a JV
  - Is Hedging the bet ok?

# ***PROHIBITION ON MENTORS SUBMITTING COMPETING OFFERS FROM PROTÉGÉS***

- Mentor that has more than one protégé cannot submit competing offers in response to a solicitation for a specific procurement through separate joint ventures with different protégés
- What about one proposal with each protégé on a multiple award contract in different business pools -WOSB, SVOSB, 8(a), small?
- **Q:** Can two protégés from same Mentor Joint Venture together?

# NEW RULE ON MENTOR PROTÉGÉ CONTRACTS

- 3 CFR 125.9(b)(3)(ii)(B) New language
- Mentor cannot be a contract holder through joint ventures with 2 protégés at the same time on same small business multiple award contract or small business reserve on a multiple award contract
- A if mentor purchases another SBA approved mentor that is a contract holder as a joint venture with a protégé and the mentor is also a contract holder with a protégé on that same multiple award contract, **the mentor must exit one of those joint venture relationships.**
- If that happens the protégé firm from which the mentor exited may seek to:
  - Acquire the new mentor's interest in the small business multiple award contract and if necessary, novate such contract or reserve to itself only pursuant to FAR; or
  - Replace the new mentor with another business in the joint venture such that the revised joint venture will continue to qualify as small and be eligible for orders issued under the multiple award contract.

## NEW RULE EFFECTIVE JAN 2025 – MENTOR WANTS OUT OF JV:

- *13 CFR § 125.9 What are the rules governing SBA's small business mentor-protégé program?*
- *Where a mentor seeks to sell its interest in a mentor-protégé joint venture, the protégé firm shall have a right of first refusal to purchase that interest. SBA will not find affiliation where a protégé obtains financing under normal commercial terms in order to purchase the mentor's interest in a mentor-protégé joint venture.*

# MENTOR PROTÉGÉ UPDATED LIMITATIONS ON SUBCONTRACTING

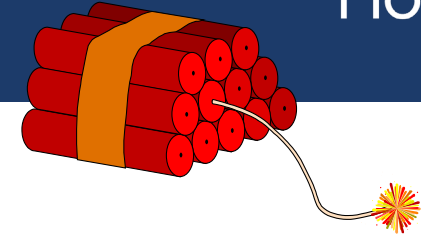
- **§ 125.6 What are the prime contractor's limitations on subcontracting?**
- (a) *General*. In order to be awarded a small business set-aside contract, an 8(a) contract, an SDVOSB contract, a HUBZone contract, a WOSB or EDWOSB contract with a value greater than \$150,000, a small business concern must agree that:....
  - (1) In the case of a contract for services **no more than 50% of the amount paid by the government to the prime may be paid to firms, at any tier, that are not similarly situated.**
  - 2) In the case of a contract for supplies or products (other than from a nonmanufacturer), no more than 50% of the amount paid by the government to the prime may be paid to firms, at any tier, that are not similarly situated
- **Cost of Materials excluded**

# MENTOR PROTÉGÉ JV AND PROTÉGÉ SELF-PERFORMANCE

- 40% rule
- *The amount of work done by the partners will be aggregated and the work done by the small business protégé partner must be at least 40% of the total done by the partners. **In determining the amount of work done by a mentor participating in a joint venture with a small business protégé, all work done by the mentor and any of its affiliates at any subcontracting tier will be counted.***
- *Work performed by a similarly situated entity will not count toward the requirement that a protégé must perform at least 40% of the work performed by a joint venture.*

# COMMON PROBLEMS IN JOINT VENTURE AGREEMENTS

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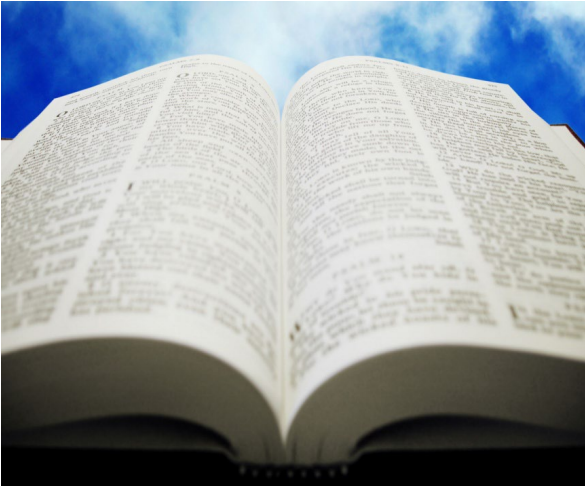


- Using other companies forms found on internet
- Using templates without modifying them to address specific projects
- Does not address rights, risks, liabilities or expectations

# CONSEQUENCE OF NOT FOLLOWING JV REGULATIONS

- **Basis For Suspension or Debarment.**
  - For any joint venture between a protégé small business and a mentor authorized by § 125.9, the Government **may consider the following as a ground for suspension or debarment as a willful violation of a regulatory provision or requirement applicable to a public agreement or transaction:**
    - Failure to enter a joint venture agreement that complies with requirement of the mandated contents of a joint venture agreement.
    - Failure to perform a contract in accordance with the joint venture agreement or performance of work requirements in paragraph (c) of this section; or
    - Failure to submit the required certifications.





## ***JOINT VENTURE SIZE APPEALS OF INTEREST***



# SIZE APPEAL SYSCOM, INC.

## MARCH 2023



- On December 9, 2021, the USAF issued RFQ for refuse and recycling services set aside to 8(a) firms.
- Size Protest was filed challenging eligibility of a Mentor-Protégé Joint Venture (JV)
- JV was organized under Michigan law. Articles of Organization indicated LLC had no designation as to the identify of Manager or Managing Member of the JV. The JV had no operating agreement.
- However, under Michigan law provides that management is vested in the members unless otherwise provide in the articles of organization or operating agreement.
- Appeal Decision: No evidence as to who is designated as the Managing Venturer and “inconsistent with Michigan law, which statutorily vests management of an LLC in all of its members.
- **Tip: Re-use of other JV agreements**

# SBA SIZE APPEAL: FOCUS REVISION PARTNERS 2023



- Solicitation for A&E services in support of FEMA's Risk Mapping, Assessment, and Planning program
- Protest against awardee that was a JV under SBA MP program
- JVA was drafted, several years before the solicitation was issued.
- OHA determined "without the JVA Addendum," the JVA did not contain sufficient detail to meet the JV regulatory requirements
- The "JVA made references to a "Contract," but current contract bid was an unrelated procurement by USACE.
- The JVA Addendum was unsigned and not created until after the date of the final proposal revisions: Did not meet the SBA regulatory requirements.

# ***RECENT EXECUTIVE ORDERS, REGULATION CHANGES AND GUIDANCE***



## NEW FINAL RULE A&E SERVICES - QUALIFICATIONS

- [DFARS Case 2023-D007](#):
- Final Rule: Effective December 18, 2024.
- Confirms that under the Brooks Act, DoD contracting officers must use qualification-based selections when awarding task orders and delivery orders for A&E services
- Adds new language to Section 802 preventing contracting officers from requesting additional info on qualifications when evaluating task orders or delivery orders Solicitation proposals under a multiple-award contract.

# NEW FINAL SBA REGULATIONS WOSB PROGRAM

- Effective January 3, 2025, a final rule amends the SBA's Women-Owned Small Business (WOSB) federal contracting program:
- Adds new definitions regarding ownership and control
- Limits on outside employment
- Makes changes to the SBA certification review process regarding the effects of a status determination on a small business concern.

# WOSB PROGRAM CHANGES OUTSIDE EMPLOYMENT



- Published Dec 2024, Effective January 3, 2025
- A woman or ED woman generally must devote full time to the business concern during its normal hours of operations.
- The woman or ED woman who holds the highest officer position of the business may not engage in outside employment that prevents her from devoting the time and attention to the business concern necessary to control its management and daily operations.
- Any qualifying woman or ED woman who seeks to engage in outside employment after certification must notify SBA of the nature and anticipated duration of the outside employment and demonstrate to SBA that the outside employment will not prevent her from controlling the business concern.

- FYI - FOR YOUR INFORMATION, INC., VS UNITED STATES
- GSA and DHS refuses to recognize Plaintiff, company called as a WOSB specifically for two pending unrelated proposals it submitted for WOSB set aside. . FYI has submitted proposals
- Why? Because FYI lacks the required WOSB certification
- COFC cites to another SBA recent case:
  - *The regulation is clear, a concern seeking a WOSB set aside contract must be eligible to be a WOSB and be either certified or have a certification application pending. 13 C.F.R. § 127.504(a). . . . Appellant has no pending application for certification.*



- Are you an SBA WOSB or if your teaming or JV partner WOSB?
- How was WOSB obtained?
  - I applied directly and personally uploaded the documents information
  - I used a 3<sup>rd</sup> party certifier. If so, please understand...
- Long wait time for WOSB review, however, rule allows offerors to bid while WOSB application is pending.
- Tips in the meantime...



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## RECENT SBA SIZE APPEALS

# ***Lintech Global, SBA No. SIZ-6287, 2024*** **(May 29, 2024)**

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- SBA OHA Size Appeal. LinTech appealed SBA size determination and won.
- Federal Supply Schedule Contract 5 years with options over 5 years
- LinTech was acquired by large business in initial contract period.
- LinTech submitted all required recertifications and notifications of the acquisition. CO did not require size recert for task order
- OHA held that even though the SBA had adopted new Merger and Acquisition rules regarding size, including rules requiring Multiple Award contracts and FSS the regulations still did not make recertified entities ineligible for set-aside task order competitions.

# NEW SWEEPING FINAL RULES

- Due to *LinTech* and other successful size appeals the SBA is issued new rules with sweeping changes especially regarding size after acquisition.
- New Rule – named “HUBZone Program Updates and Clarifications to Other Small Business Programs,” the most crucial changes are not about HUBZone, but instead changes to how and when size is calculated, addresses past performance in joint ventures, minority investments and many more sweeping changes.

***NEW RULE – EFFECTIVE  
JANUARY 16, 2025***

- Dec. 17, 2024, SBA issued a Final Rule that makes sweeping changes regarding:
  - recertifications of size for set-aside contracts following the merger or acquisition of a contractor.
  - Affiliation
  - Ostensible Subcontractor
  - Ownership definitions regarding 8a, SDVSOB etc.
- Final rule became effective on Jan. 16, 2025.....

# AFFILIATION – NEW LANGUAGE CHANGES ON “NEGATIVE CONTROL TRIGGERS

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- § 121.103 (a)(3) How does SBA determine affiliation?
- ***General Principles of Affiliation.***
- Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. (2) SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. (3) Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders. However, SBA will not find that a minority shareholder has negative control where such minority shareholder has the authority to block action by the board of directors or shareholders regarding the following extraordinary circumstances:
  - Adding a new equity stakeholder or increasing the investment amount of an equity stakeholder;
  - Dissolution of the company;
  - Sale of the company or all assets of the company;
  - The merger of the company;
  - The company declaring bankruptcy;
  - Amendment of the company's corporate governance documents to remove the shareholder's authority to block any of (a)(3)(i) through (v); and
  - Any other extraordinary action that is crafted solely to protect the investment of the minority shareholders, and not to impede the majority's ability to control the concern's operations or to conduct the concern's business as it chooses.

## New 40% Joint Venture Rule

- 13 CFR 121.103(h) Affiliation based on joint ventures
- Old Rule – If a Mentor and Protégé JV then protégé must perform at least 40% of the required % of the JV.
- Percentage silent if both JV partners were small. New Language effective Jan 2025:
  - *A joint venture offeror is ineligible as a small business concern, an 8(a) small business concern, a certified HUBZone small business concern, a WOSB/EDWOSB concern, or a VO/SDVO small business concern where SBA determines that the managing joint venture partner will not perform 40% of the work to be performed by the joint venture.*

## NEW RULE EFFECTIVE JAN 2025 – WOSB/EDWOSB

- SBA amended 13 CFR 127.201 by adding language regarding “Right of First Refusal” under requirements for Ownership of WOSB/EDWOSB
- In the past right of first refusal was deemed negative control regarding ability to transfer ownership
- Now (b) *Unconditional ownership. To be considered unconditional, ownership must not be subject to any conditions, .....*
- *A right of first refusal granting a man or other entity the contractual right to purchase the ownership interests of the qualifying woman, does not affect the unconditional nature of ownership, **if the terms follow normal commercial practices**. If those rights are exercised by a man or other entity after certification, the WOSB/EDWOSB must notify SBA. If the exercise of those rights results in qualifying women owning less than 51% of the concern, SBA will initiate decertification pursuant to § 127.405.*



## INTERESTING NOTE IN COMMENTS AND RESPONSES TO SBA ON NEW RULE AND 8(a) PROGRAM

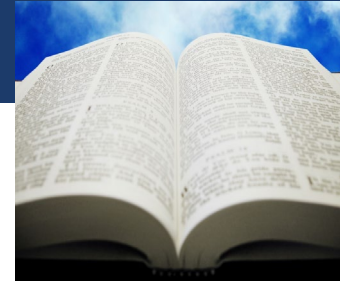
- *Specifically, the commenter posed a hypothetical where a non-disadvantaged individual owns a business concern and agrees to “sell” 51 percent of the business concern to a disadvantaged individual **with the proviso that in nine years the disadvantaged individual would sell the 51 percent back to the non-disadvantaged individual through a right of first refusal provision in the corporate documents.***
- *“SBA believes that such an arrangement would not be a right of first refusal that followed normal commercial practices, but rather a scheme to deceive SBA and allow greater participation in the program by a non-disadvantaged individual than would otherwise be permitted. If SBA were aware of such a right of first refusal provision, it would not approve the application for 8(a) certification. SBA adopts the proposed language as final.*

## SIZE APPEAL – IN DANIELS BLDG. CO., APRIL 5, 2025

- Federal Court of Claims denies protest and upholds prior SBA OHA decision, of OHA's finding that the challenged SDVOSB member of a team performing a construction contract **would not violate the ostensible subcontractor rule** because:
  - it would perform the primary and vital requirements of the contract, which, in the case of construction contracts is the
    - *"management, supervision and oversight of the project, including coordinating the work of various subcontractors, not the actual construction work performed."*

## SBA CLARIFIES QUESTION - EFFECTIVE JAN 2025

- New 13 CFR § 125.2(c)(6) SBA added rule clarifying that a contracting agency cannot restrict a small business set-aside or reserve (for either a contract or order) **to require multiple socioeconomic program certifications** in addition to a size certification.
- New Final Rule SBA addressed whether there can be a partial set-aside and a reserve on the same requirement. SBA say yes that both can occur with respect to one procurement requirement.
- *A partial set-side can be done for one or more CLINs that must be set-aside for small business and a reserve could also be done on the same procurement for other items or services where a contracting officer would have discretion to utilize the small business reserve or not.*



## ***RECENT BID PROTEST OF INTEREST***



# ASRC Federal Data Solutions, LLC December 9, 2022

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- GAO sustained a protest by ASRC Federal Data Solutions, LLC, because the awardee's proposal contained a **material misrepresentation concerning the availability of key personnel**
- Awardee represented that it has contingent offers for key personnel, but the identified individual stated that they were exclusively committed to another firm, did not consent to the use of their name or qualifications in the awardee's quotation, and did not accept a contingent offer of employment.
- Held: This is was a material misrepresentation because it had a material effect on the agency's evaluation of the awardee's proposal.

- NDAA Section 885 increases dollar threshold for protests of IDIQ DoD task order awards under a from \$25,000,000 to \$35,000,000.
- This will significantly decrease the amount of protests.
- Note, all other civilian agencies:
  - Cannot protest task order under 20 million.

# GAO PROTEST: Limitations on Subcontracting

- MartinFederal Consulting, May 11, 2022
- Army issued small business set-aside solicitation to operate and maintain laboratories in designated locations throughout the world
- Martin, the incumbent contractor, alleged that the award Altus was improper because it lacked the requisite experience and presumed it would violate the limitation of subcontracting by subcontracting more than 50 percent of the contract labor.
- But solicitation also provided that offerors could form teaming arrangements; and that the “[t]he offeror “must demonstrate clearly that it can self-perform, or perform through its teaming or subcontractor arrangements.”

# GAO PROTEST: Limitations on Subcontracting Continued



- The GAO agreed with the Agency response that Martin was just speculating as to how much work would be done by the prime and further argued that Martin has a flawed understanding of FAR clause 52.219-14.
- FAR clause 52.219-14 provide that a prime contractor “will not pay more than 50 percent [of the contract value] to subcontractors that are not similarly situated entities.”
- Since Altus proposed MRG as a subcontractor and MRG is also a small business, there would be no violation of the LOS.





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## RECENT SBA SIZE APPEALS

# SBA OHA DENIAL OF VOSB CERTIFICATION UPHELD

- In [\*VSBC Appeal of Black Cultural Initiative LLC\*](#), Dec 3, 2024
- OHA upheld the denial of a firm's certification as a VOSB due to failure to demonstrate that the veteran controlled the firm.
- Documents provided by the firm were contradictory,
- Unclear whether firm was a partnership or LLC and
- Unclear whether the firm was member-managed or manager-managed,

## SBA OHA VETERAN CERTIFICATION

- In VSBC Appeal of MaxIt Corp., Dec 3, 2025
- SBA OHA upheld the denial of a firm's certification as a VOSB
- Firm's Bylaws gave negative control of the concern to the non-veteran Director,
- Amendment to the Bylaws did not eliminate
  - The supermajority requirement for removal of a Director and
  - Establishment of forum required a majority vote for action by the Board.

## SBA APPEAL – SIZE PROTEST JOINT VENTURES

- February 26, 2025, SBA's OHA held that not only the joint venture agreement must be review but also the Operating Agreement to determine if joint venture is small and eligible for small business contract award.
- *“OHA has consistently considered a concern's operating agreements together with its joint venture agreements in judging a concern's compliance.”*
- Here, the JVA did not contain the mandatory terms required by SBA JV regulations, but the Operating agreement did. However, Area Office did not review operating agreement for compliance.
- But what we don't have a written operating agreement?
- Most states do not require written operating agreements.

# SIZE APPEAL – AVENGE

## November 15, 2022

- Size Appeal of Avenge, Incorporated, SBA No. SIZ-6178 (2022)
- SBA requires firm to recertify at time of task order solicitation under multiple award contract because:
  - underlying contract stated individual orders **would be limited to small businesses** even though individual task order solicitation did not specifically state recertification was required



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## ***CONTRACT DISPUTE CASES***

- Federal Court Cases
- Contract Board of Appeals



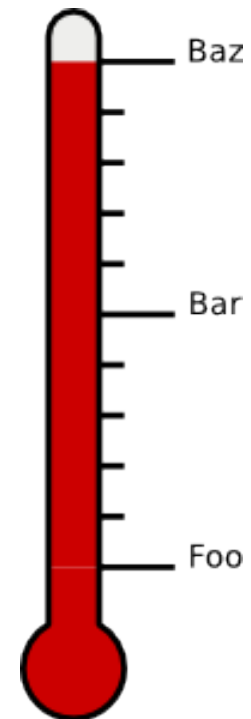
# BOARD OF CONTRACT APPEALS WRONGFUL T4C – MARCH 2023



- Hughes Group LLC appealed VA decision to terminate Hughes' janitorial services contract for cause based on Hughes' alleged failure to cure persistent performance deficiencies.
- However, instead of terminating Hughes' contract in the weeks following the cure notice, the agency breached the contract by failing to pay Hughes for months, while Hughes continued to perform.
- 10 days after paying Hughes' overdue invoices in full, the agency sought to terminate Hughes' contract based on deficient work. The notice, styled as a termination for cause, directed Hughes to continue performing until the contract nearly expired.
- **Because we find that the agency's actions waived the right to terminate without first issuing a new cure notice, rendered the purported termination for cause ineffective, and were arbitrary and capricious,**

# GOVERNMENT CLIMATE

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- Don't get too panicked
- Important to Understand difference between Executive Order and Congress passed legislation – (Federal Statute)
- Many Executive Orders are directed to Federal Agencies and Grant Recipient
- Affirmative Action – discussion on Federal and state compliance.

## Fort Myers Couple Sentenced To Federal Prison For \$3.4 Million COVID Relief Fraud Scheme - Friday, April 11, 2025



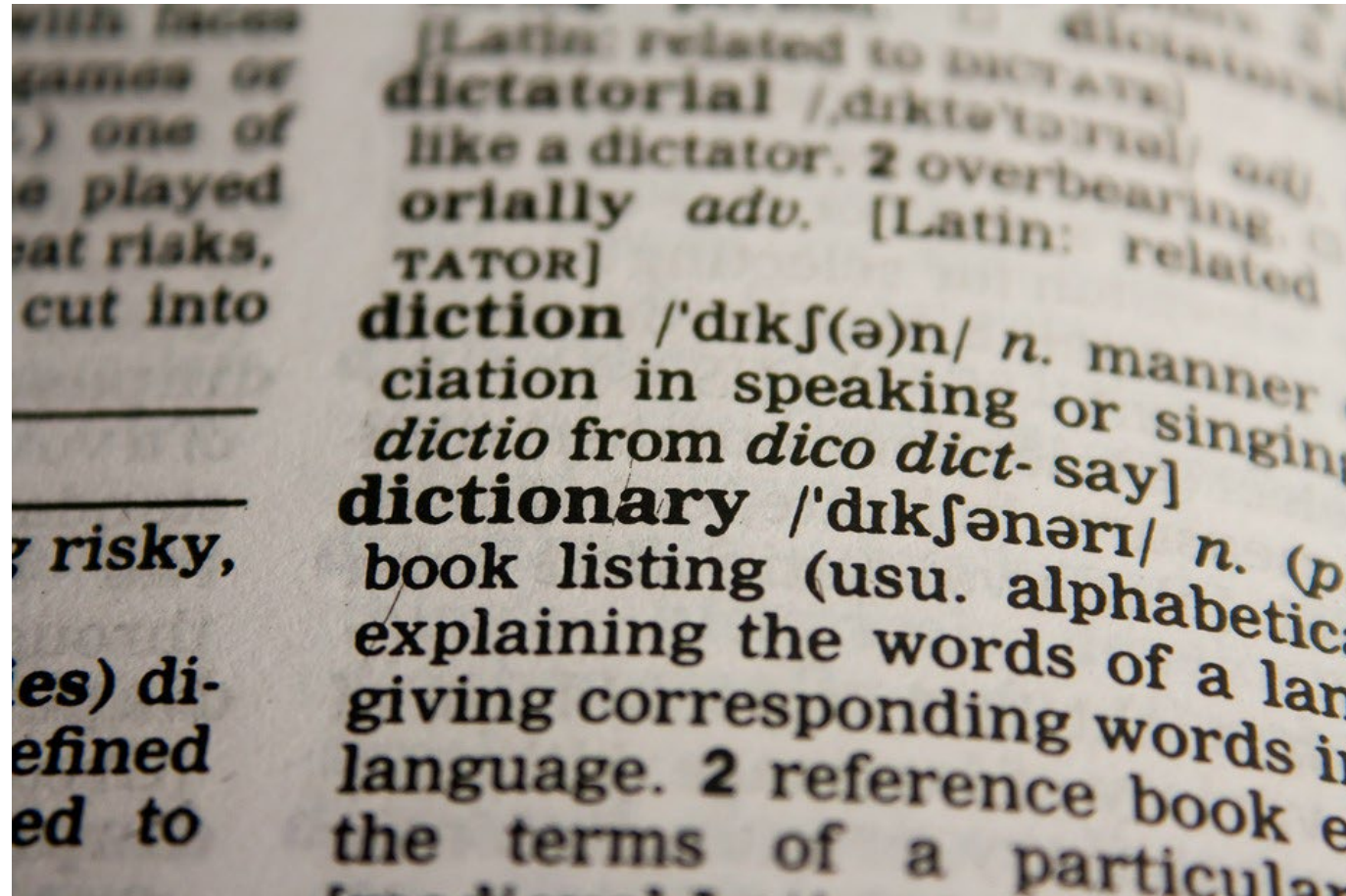
- Fort Myers, Florida –Timothy Craig Jolloff (48, Fort Myers) and Lisa Ann Jolloff (58, Fort Myers) to eight years and one month, and three years, respectively, in federal prison for sentenced to 8 years and 3 years respectively for wire fraud, bank fraud and illegal monetary transactions regarding their fraudulent representations made to obtain PPP and EIDL loans totaling approximately \$3,403,265.
- *The Jolloffs then used the funds to purchase three pontoon boats totaling more than \$300,000, real estate in Fort Myers, Florida and Angola, Indiana, home furnishings, outdoor kitchens for their homes, a 2019 GMC truck, a 2020 Polaris UTV, as well as jewelry, and two dogs. The Jolloffs also fraudulently used more than \$600,000 in EIDL funds to purchase a furniture business in Indiana and a landscaping business in Sarasota, Florida, which had no connection to the businesses for which the Jolloffs obtained COVID relief money.*
- The Court also ordered the Jolloffs to pay \$3.4 million in restitution to the Small Business Administration (SBA) and to forfeit \$3.4 million which was the proceeds of the offense. The Jolloffs entered guilty pleas on April 24, 2024.

## ***NEW EXECUTIVE ORDERS: IMPACT ON FEDERAL CONTRACTORS***



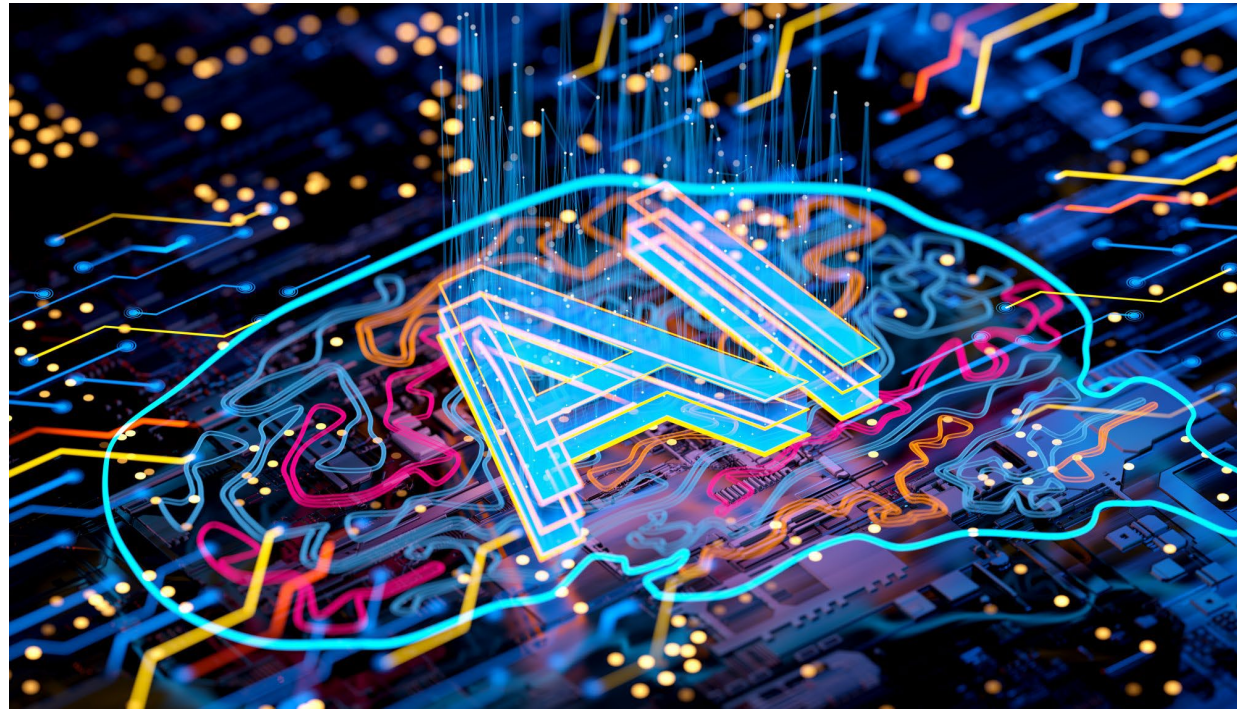
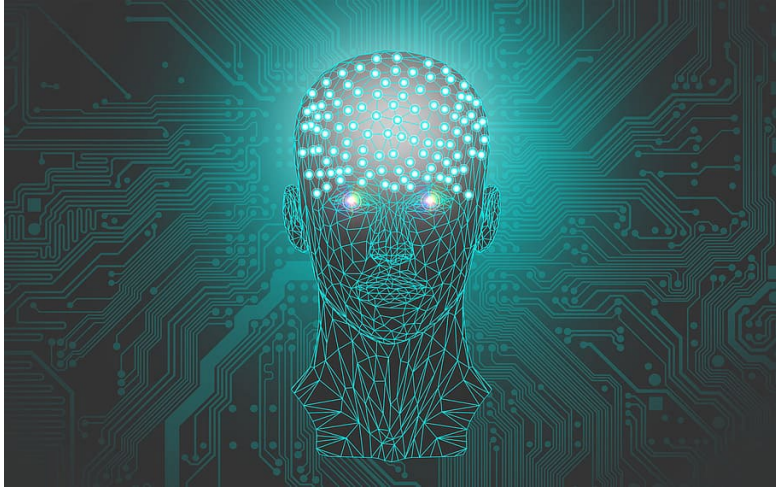
# DEI – ORDERS “WORDS”

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# ARTIFICIAL INTELLIGENCE UTILIZED TO HELP SCOUR CONTRACTS, PROPOSALS, AGENCY DIRECTIVES AND OTHERS



- EPA is taking is addressing the Clean Water Act by new executive orders
- This can impact the ability to issue solicitations, could result in imprecise solicitation language; renewal of contract options, and contract cancellation.
- Looking at existing contracts and forecasted contracts. Focus appears to be in Pollution Remediation, Clean-Energy, Clean Transportation, Affordable Housing
- Check your existing contracts and options, carefully review solicitations, re-evaluate your standard proposal terms
- Re-evaluate your marketing materials

# NEW AGENCY DOD SECRETARY OF DEFENCE MEMO

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- *Review and Validation of Contracts for Consulting Services Memorandum issued Feb 18 2025 – Deadline April 19, 2025*
- Extensive review and action directive covering all “non-essential consulting service contracts.
- Where DoD procures through GSA, DoD doing phased approach, focusing on GSA contract vehicles, then GSA contracts
- *“Components shall take action to terminate, descope, or forego exercising options for requirements determined to be non-essential”*



# U.S. Department of JUSTICE

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- Compliance concentration is changing
- Understand what the new administration is focused on and make sure you comply.
- Check your Prime Contracts and Subcontracts, Teaming and JV Agreements. Are there provisions or other ns that can expose you to a T4D, Suspension or Debarment
- Talk to your trusted Advisor





# COVID-19 Relief: Consequences of Fraud and Lessons for P

GAO-25-107746  
Q&A Report to Congressional Committees  
April 9, 2025

## Why This Matters

Pandemic-relief programs were critical for assuring public health and economic stability. However, they also created unprecedented opportunities for fraud due to the dollars involved and other risk factors. These factors included changes to controls (e.g., reliance on self-certification) and the introduction of new programs.

Considering what was likely lost to fraud during the pandemic and assessing what lessons and insights can be taken to better prepare for both normal operations and future emergencies is critical for agencies. Beyond financial impacts, fraud erodes public trust in government and hinders agencies' efforts to execute their missions and program objectives effectively and efficiently. Therefore, taking steps to prevent fraud from occurring is crucial.

While the disbursement of pandemic-relief funds is largely over, the work of investigating, prosecuting, and recovering fraudulently disbursed funds is ongoing. The Department of Justice (DOJ) and its law enforcement partners continue to prioritize the investigation and prosecution of defendants (individuals or entities) that committed these offenses.

We performed this work under the CARES Act that includes a provision for GAO to report on our ongoing monitoring and oversight efforts related to the COVID-19 pandemic. This report provides information on the status of pandemic-relief program cases involving fraud-related charges brought by DOJ and how agencies can enhance fraud prevention.

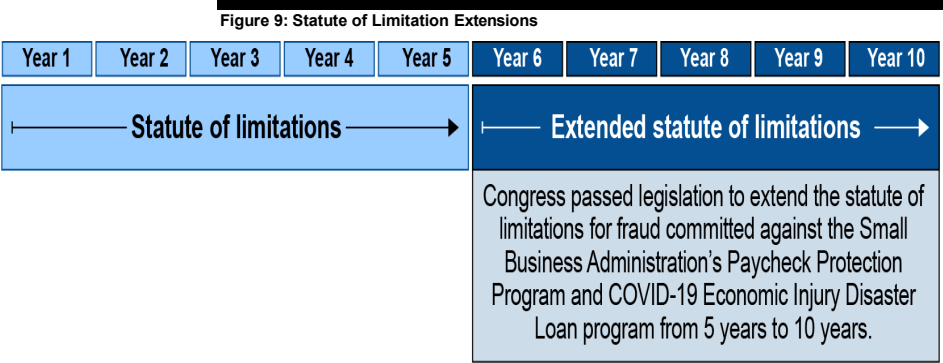
## Key Takeaways

- The full extent of pandemic-relief program fraud will likely never be known with certainty. However, estimates indicate that hundreds of billions of dollars in potentially fraudulent payments were disbursed.
- At least 2,532 defendants have been found guilty of fraud-related charges involving pandemic-relief programs, as of December 31, 2024. Those sentenced faced serious consequences, including prison time and restitution orders.
- Pandemic-relief program fraud was committed by individuals from all types of backgrounds. Although crime syndicates and career criminals were involved in some cases, many individuals who did not appear linked to organized fraud or criminal groups also defrauded these programs.
- While agencies may never be able to sway all fraudsters from attempting to defraud programs, actions—such as establishing adequate controls and emphasizing the consequences of fraud—can be taken to prevent and deter future fraudsters. We have made numerous recommendations to help agencies effectively manage fraud risks.

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The full extent of fraud within the pandemic-relief programs will never be known with certainty. The scope of the pandemic-relief response; the inherently deceptive nature of fraudulent activities; and the resources needed for detection, investigation, and prosecution of fraud make it difficult to measure. However, estimates indicate hundreds of billions of dollars in potentially fraudulent payments were disbursed.

According to our analysis, the most commonly defrauded pandemic-relief programs were SBA's PPP and the COVID-19 EIDL program, along with DOL's UI programs. At least 2,393 defendants (or almost 95 percent) that have been found guilty of fraud-related charges involving pandemic-relief programs defrauded PPP, COVID-19 EIDL, and UI programs, either exclusively or in combination with each other or other pandemic-relief programs.



Source: GAO analysis of relevant legislation. | GAO-25-107746

# FALSE CLAIMS ACT SETTLEMENT

## JANUARY 29, 2025



Office of Public Affairs  
U.S. Department of Justice

- Department of Justice (DOJ) recently announced a \$949,696.90 False Claims Act (FCA) settlement with GS Foods Group Inc. (GS Foods) for improperly bidding on contracts reserved for small businesses despite not qualifying as a small business.
- DOJ alleged that between Oct. 1, 2018 and March 8, 2024, GS Foods did not qualify as a small business because of its affiliation with its subsidiaries, GoodSource Solutions Inc., and Dori Foods Inc.,
- Despite the affiliation GS bid on and were award contracts and task orders that had been expressly reserved, or set-aside, exclusively for small businesses. “As a result, GoodSource Solutions and Dori Foods allegedly obtained contracts for which they were not eligible”
- Lessons learned.

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TODAY APRIL 17 2025

- SBA office closings
- What may happen
- Impacts

# April 15, 2025 New Executive Order ON FARS

- On April 15, 2025, the President signed Executive Order titled *“Restoring Common Sense to Federal Procurement”*
- “This directive launches a major overhaul of the FARS with goals of simplifying federal contracting, reducing red tape, and eliminating non-essential rules.”
- Key Points:
  - The FAR will be streamlined to include only legally required or essential provisions
  - Non-statutory rules may sunset after four years unless renewed.
- Deadlines to Note:
  - May 5: OMB issues implementation guidance
  - October 12: FAR revisions due

# REDUCE RISKS OF TROUBLE

- Is your company in compliance with your contracts and FARS?
- Do you have an Ethics Policy in place?
  - Have you shared it with current employees
  - All new hires?
  - Training?
- Have questionable relationships in place that “just don’t feel right” ?
- Due Diligence on JV and teaming partners?
- SAM Reps and certs updated?



## **QUESTIONS? CONTACT ME OR JOEY:**

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