

# NATIONAL ASSOCIATION OF ORDNANCE CONTRACTORS

2024 Annual Meeting  
Small Business  
Committee



# Points of Discussion

- **CMMC**
- **Rule of Two**
- **Past Performance of Affiliate Companies**
- **SAM Registration**
- **WOSBs**
- **Increasing Small Business Participation**
- **Small Business Resources**

# Cybersecurity Maturity Model Certification (CMMC) Program

- The final CMMC program rule was published in the Federal Register on Tuesday, October 15, 2024.
- ***This rule is effective December 16, 2024.*** 3 year phased rollout – 1<sup>st</sup> year, self assessments; 2<sup>nd</sup> year – Level 2, certifications; 3<sup>rd</sup> year – full compliance.
- In the final rule, DoD establishes the CMMC Program to verify contractors have implemented required security measures necessary to safeguard Federal Contract Information (FCI) and Controlled Unclassified Information (CUI).
- The final rule establishes three distinct “levels” of CMMC, as first envisioned under the revised program.
- Under level one, contractors that handle less sensitive “federal contract information” will be able to submit a self-assessment of their compliance.
- CMMC Level 2 requirements will apply to all contractors that process, store, or transmit CUI, and will provide DoD with a means to assess that CUI safeguarding requirements prescribed in 32 CFR part 2002 have been met.
- Contractors at Level 2 may be required to obtain a third-party assessment. Those auditors will be authorized by the Cyber Accreditation Body, a nonprofit that holds a contract with DoD.

# CMMC Program

- Meanwhile, DoD says some CUI will require a “a higher level of protection against risk from advanced persistent threats.” Contractors that handle that type of information will be required to get an assessment led by the Defense Industrial Base Cybersecurity Assessment Center as part of CMMC level three requirements. The level three requirements include additional cybersecurity controls laid out in NIST Special Publication 800-172.
- **DoD estimates 8,350 medium and large entities** will be required to meet CMMC Level 2 Certified Third-Party Assessor Organization (C3PAO) assessment requirements as a condition of contract award.
- DoD estimates 135 CMMC Third-Party Assessment Organization (C3PAO)-led certification assessments will be completed in the first year, 673 C3PAO certification assessments in Year 2, 2,252 C3PAO certification assessments in Year 3, and 4,452 C3PAO certification assessments in Year 4.
- [Federal Register :: Cybersecurity Maturity Model Certification \(CMMC\) Program](#)

# CMMC Program

## ➤ Contractor Implementation

- An Organization Seeking Assessment (OSA) (i.e., Contractor) will select the CMMC level it desires to attain.
- Once the CMMC Program is implemented, a DoD solicitation will specify the minimum CMMC Status required to be eligible for award.
- **Level 1 (Self)** is a self-assessment to secure FCI processed, stored, or transmitted during fulfillment of a contract. The OSA must comply with the 15 security requirements set by FAR clause 52.204-21. All 15 requirements must be met in full—no exceptions are allowed.
- **Level 2 (Self)** is a self-assessment to secure CUI processed, stored, or transmitted during fulfillment of a contract. The OSA must comply with the 110 Level 2 security requirements derived from NIST SP 800-171 R2.
- **Level 2 (C3PAO)** differs from Level 2 (Self) in the method of verifying compliance. OSAs must hire a C3PAO to conduct an assessment of the OSA's compliance with the 110 security requirements of NIST SP 800-171 R2. OSAs can shop for C3PAOs on the CMMC Accreditation Body (AB) Marketplace.
- **Level 3 (DIBCAC)** is a government assessment of 24 additional requirements derived from NIST SP 800-172, titled “*Enhanced Security Requirements for Protecting Controlled Unclassified Information: A Supplement to NIST Special Publication 800-171*,” February 2021 (NIST SP 800-172 Feb2021). The OSA must ensure that they have already achieved a CMMC Status of Final Level 2 (C3PAO) before seeking CMMC Status of Final Level 3 (DIBCAC). Once this is done, an OSA should then initiate a Level 3 certification assessment by emailing a request to Defense Contract Management Agency (DCMA) Defense Industrial Base Cybersecurity Assessment Center (DIBCAC) point of contact found at [www.dema.mil/DIBCAC](http://www.dema.mil/DIBCAC), being sure to include the Level 2 (C3PAO) certification unique identifier in the email.

# CMMC Challenges to Small Business

- CMMC are quite burdensome, technical and intricate many small businesses lack in-house skills, possibly leading to confusion and non-compliance. Much time is required for conducting assessments, implementing controls, and documenting procedures
- CMMC compliance standards are not static; they are continually evolving and becoming more complex
- CMMC compliance is resource straining, costs will vary based on factors like the size of the company, level of certification required, and any necessary consultations.
  - Congress, in partnership with the Department of Defense, are considering a tax credit to help smaller defense contractors demonstrate CMMC compliance. The draft “Small Business Cybersecurity Act of 2024” would allow companies with 50 or fewer employees to claim up to \$50,000 in tax credits for CMMC-related costs.

# CMMC Certification

## ➤ Recommendations for Streamlining the CMMC Certification Process

- Perform an In-depth Gap Analysis
- Hire a CMMC Consultant
- Incorporate a Culture of Cyber Awareness
- Consider Cybersecurity Insurance
- Prepare for the CMMC Audit
- Commit to Continuous Monitoring
- Keep Documentation Up to Date
- Conduct Regular Internal Audits
- Implement Managed Services
- Deploy Additional Security Solutions

# SBA Proposed Rule “Rule of Two”

- SBA’s proposed rule (as of October 25, 2024) would require the Rule of Two’s application to task orders and delivery orders under most standard multiple award contracts (MAC).
- Rule of Two is similarly codified at both FAR 19.502-2 and 13 C.F.R. § 125.2(f) (the SBA regulation proposed to change). Both of these rules are divided into two sections based on the value of the contract.
- In the FAR’s Rule of Two, Section (1) covers contracts with an anticipated dollar value between the micro-purchase threshold (MPT) and simplified-acquisition threshold (SAT) and Section (2) covers those exceeding the SAT.
- This proposed rule would apply the Rule of Two to multiple award contract task and delivery orders (with some exceptions).
- Under the Rule of Two, unless an exception applies, an agency must set aside the award for small businesses where there is a reasonable expectation of receiving offers from two or more small-business contract holders under the multiple award contract that are competitive in terms of price, quality, and delivery. Documentation requirements apply where the agency decides not to move forward with a set-aside order.
- Any comments on the proposed rule “must be received on or before **December 24, 2024**.”



# Past Performance of Affiliate Companies of Small Business Concerns (DFARS Case 2024-D016)

- On November 15, 2024, DoD issued a final rule amending the DFARS to implement section 865 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024.
- Section 865 requires DoD contracting officers to consider relevant past performance of affiliate companies of small business concerns during the evaluation of past performance in response to a competitive solicitation.
- **Past Performance Evaluation**
  - (A) When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219-9, Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.
  - (B) Contracting officers shall consider an offeror's failure to make a good faith effort to comply with its comprehensive subcontracting plan under the Test Program described at 219.702-70 as part of the evaluation of the past performance.
  - (C) *When evaluating the past performance of an offeror that is a small business concern in response to a competitive solicitation, contracting officers shall consider relevant past performance information provided for affiliates of the offeror.*

# SAM Registration Not Constantly Required

- In an interim rule effective November 12, 2024, the FAR is being updated to clarify that “the offeror must be registered at time of offer submission and at time of contract award, but would not be required to be registered at every moment in between those two points.”
- This is an interim rule, meaning it is effective starting November 12, but comments are accepted until January 13, 2025.
- The rule will update FAR 52.204-7, System for Award Management.
- The new language will remove this continuous registration requirement and only require registration at two points in time:
  - (1) Time of offer.
  - (2) Time of contract award.

# Women-Owned Small Business Federal Contract Program Updates and Clarifications

- Rules were intended to take the WOSB regulations and make them more consistent with the other types of set-aside programs offered by the SBA.
- The rules become effective **January 3, 2025**. It applies to all solicitations issued on or after that date.
- Once effective, the owner must devote full-time to the business concern during its normal hours of operations (may not engage in outside employment that prevents her from devoting sufficient time and attention to the business concern to control its management and daily operations.)
- The owner must demonstrate that she has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management and administration of the business.
- Post-certification, the owner who seeks to engage in outside employment must notify about the nature and anticipated duration and demonstrate to SBA that this work will not prevent her from controlling the business concern.
- Certification as VOSB or SDVOSB can be used to gain certification as a WOSB.

## Increasing Small Business Subcontracting Participation in the Federal Marketplace

### ➤ November 29, 2024 MEMORANDUM FOR CHIEF ACQUISITION OFFICERS SENIOR PROCUREMENT EXECUTIVES from OMB

- OMB is releasing procurement guidance on both upcoming contracts and subcontracting opportunities to better enable federal agencies to support small business trying to compete for the over \$700 billion in federal contracts
- OMB also is issuing guidance to improve the annual forecasts agencies issue of upcoming federal contract opportunities for businesses....” *variance in the quality and timeliness has made it difficult for small businesses to prepare their proposals and more effectively compete against*
- SBA is increasing the maximum amount backed by its Community Advantage Small Business Lending Companies loan program from \$350,000 to \$500,000
- Small businesses received some \$179 billion, or 28 percent, of eligible federal contract spending in fiscal 2023, of which \$76 billion, or 12 percent, went to small disadvantaged businesses.”

## Increasing Small Business Subcontracting Participation in the Federal Marketplace

Category	Percentage of Total Subcontract Dollars Awarded	Sub-contracting Goal	Total Subcontract Dollars Awarded (in billions)	Percentage of Plans with Goals for Small Business Category*	Percentage of Plans with Goals Met*
Small Businesses	33.34%	31%	\$86.4	92.0%	61.7%
Small Dis-advantaged Businesses	4.89%	5.0%	\$12.7	75.9%	47.4%
Women-owned Small Businesses	5.65%	5.0%	\$14.7	78.2%	51.6%
Service-Disabled Veteran-owned Small Businesses	2.63%	3.0%	\$6.8	64.5%	38.1%
HUBZone Small Businesses	1.97%	3.0%	\$5.1	63.6%	34.8%

*“..if contractors had met their subcontracting plan goals on prime contracts completed in FY 2023, small businesses would have received **almost \$1.5 billion more in subcontract awards** and small business concerns owned and controlled by socially and economically disadvantaged individuals (SDBs) would have received an additional \$850 million in subcontract awards.”*

# Increasing Small Business Subcontracting Participation in the Federal Marketplace

- OFPP will work with GSA, SBA, and other agencies to consider ways in which subcontracting data can be used more strategically by agencies and contractors to identify opportunities for strengthening supply chains and addressing vulnerabilities.
- **Pre-award reminders and considerations**
  - Work collaboratively with small business specialists to determine opportunities for subcontracting.
  - Evaluate an offeror's performance in meeting its past small business subcontracting plan goals to predict the likelihood of achieving goals on the new subcontracting plan.
  - Consider subcontracting incentive strategies to help strengthen the supplier base.
  - Consider broadened use of small business participation evaluation factors (SBPEFs) or significant subfactors.
  - Challenge zero or virtually-zero goals (i.e., goals equaling a mere fraction of one percent).
  - Consider the value of reflecting an offeror's promised use of small business subcontractors in the contract.
  - Strengthen the small business supplier base for research and development by considering a preference for Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) subcontractors.
  - Improve agency procurement forecasts.

# Increasing Small Business Subcontracting Participation in the Federal Marketplace

## ➤ **Post-award reminders and considerations**

- Monitor submission of subcontracting plan reports, review any discrepancies with the plan, and ensure good faith compliance.
- Evaluate contractor achievement against the small business subcontracting plan and document the evaluation in the Contractor Performance Assessment Reporting System (CPARS).
- Take note of ongoing policy actions that can help small business subcontractors compete as prime contractors.

# Small Business Resources

- Small Business Administration [Small Business Administration](#)
- PilieroMazza [PilieroMazza, Law Firm, Government Contracts Attorney | Homepage](#)
- SmallGovCon [SmallGovCon - Government Contracts Law Blog](#)
- Small Environmental Business Action Coalition (SEBAC) [Sebac.org – Sebac.org](#)
- National Business Association [National Business Association | Small Business Resources & Tips](#)
- National 8a Association [National 8\(a\) Association](#)