

PTAC Link

PROCUREMENT TECHNICAL ASSISTANCE CENTER – CONNECTING BUYERS & SUPPLIERS

Progress Through Regional Cooperation In The Alleghenies

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Upcoming PTAC Training Events

Now that the weather is getting nicer (OK, how about less unstable?), the PTAC at Southern Alleghenies is happy to announce the following training events:

April 12: COSTARS Training 10 AM to 12 PM, State College, PA. Topics to include Background on the PA COSTARS program, benefits, opportunities, and marketing tips. Registration is required at the site below.

April 14: Doing Business with Penn State University, State College, PA. Registrants will learn more about how PSU purchases goods and services, the pre-qualification process, and how to find business opportunities within Penn State's 24 campuses. Registration is required at the site below.

[More information and registration \(where applicable\) may be found here:](#)

SBA Affiliation Rules: 4.16% Minority Owner "Controlled" Company

An owner of a mere 4.16% minority interest nonetheless "controlled" a company within the meaning of the SBA's affiliation rules because the company's ownership was split among approximately 20 companies, each with an equal ownership interest.

In a recent size appeal decision, the SBA Office of Hearings and Appeals confirmed that, where a company has no 50% or greater owner, a minority owner may be presumed to control the company—even where that ownership is as little as 4.16%.

OHA's decision in [Size Appeal of Government Contracting Resources, Inc., SBA No. SIZ-5706 \(2016\)](#) involved a NAVFAC solicitation for base operating support services. The solicitation was issued as a SDVOSB set-aside under NAICS code 561210 (Facilities Support Services), with a corresponding \$38.5 million size standard.

After evaluating competitive proposals, NAVFAC announced that Government Contracting Resources, Inc. was the apparent successful offeror. Two unsuccessful competitors then filed SBA size protests.

The SBA Area Office determined that GCR and "approximately 20 other companies" each owned equal minority interests in Valley Indemnity, Ltd. The SBA Area Office also noted that GCR's President and CEO served on Valley's Board of Directors.

The SBA Area Office then applied the "minority ownership presumption" under the SBA's affiliation rules. That regulation, [13 C.F.R. 121.103\(c\)\(2\)](#), states:

If two or more persons (including any individual, concern or other entity) each owns, controls, or has the power to control less than 50 percent of a concern's voting stock, and such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, SBA presumes that each such person controls or has the power to control the concern whose size is at issue. This presumption may be rebutted by a showing that such

If you have any questions about these events, please contact [James Gerraughty](#) or (814) 949-6428(814) 949-6428(814) 949-6428.

Agency Websites Found to Be More Jargon-Filled Today Than 5 Years Ago

The U.S. Geological Survey and the U.S. Mint topped rankings of 30 federal agency websites for readable, concise and orderly writing released on Tuesday. The study, the second in five years from the editorial software maker VisibleThread, concluded that "federal agency website communication is worse today than it was five years ago." Agencies with format compliance departments ranked lower on average, "likely resulting in higher costs due to poor writing practices."

The agencies with the lowest rankings were components within the Agriculture, Justice (the FBI), and Health and Human Services departments. Agriculture's "Natural Resources Conservation Service dropped 13 places to rank of 25th overall in the 2016 Index - no other agency fell further," the analysts said. "All Department of Justice agencies included decreased in rank and appeared in the bottom half of both 2011 and the 2016 rankings." Bright spots the analysts cited included the Smithsonian, which placed third, the Interior Department (fourth), the Bureau of Labor Statistics and the Census Bureau (tied for 5th). Within the struggling HHS, the report said, are highly readable websites at the Centers for Disease Control and the National Cancer Institute.

The rankings measured general readability, complexity, long sentences and avoidance of passive voice. The 2010 Plain Language Act require agencies to seek improvements in writing products long deemed too jargon-filled, bureaucratic or badly organized for the intended user. "While leaders positioned the law as a consumer victory, the act

control or power to control does not in fact exist.

The SBA Area Office determined that GCR had not rebutted the presumption that it controlled Valley. Applying the minority ownership presumption, the SBA Area Office found that GCR was affiliated with Valley. The affiliation, in turn, caused GCR to exceed the \$38.5 million size standard under the NAVFAC solicitation. The SBA Area Office issued a size determination finding GCR to be eligible for award.

GCR filed a size appeal with OHA. GCR argued, in part, that its 4.16% minority stake did not give it control over Valley. GCR noted that, under Valley's corporate documents, a quorum for a shareholder vote required a majority of shares. GCR contended that its ownership stake was too small to "create a quorum, prevent a quorum, cause any vote to pass, block any vote," or a cast a tie-breaking vote. In fact, GCR stated, its 4.16% stake was too small even to convene a shareholder meeting.

OHA wrote that, under 13 C.F.R. 121.103(c)(2), "when a concern is owned by multiple owners with equal minority interests, all of those owners are presumed to control the concern." The presumption is rebuttable, but "the mere fact that a minority shareholder cannot individually control a concern is not sufficient to overcome the presumption." Rather, a minority shareholder may rebut the presumption "by showing that a party other than the minority shareholder has the power to control."

In this case, OHA held, the presumption of control was not rebutted merely because GCR's 4.16% interest was insufficient to create a quorum, cause the company to take action, or block corporate action. "This argument," OHA wrote, "amounts to an assertion that [GCR] cannot individually control Valley," a contention that OHA has rejected in prior size appeals. In fact, "the very purpose of the [minority shareholder rule] is to address situations in which no single person or entity has actual affirmative or negative power to control a concern."

OHA continued, "[n]otably, if [GCR's] interests are too small to control Valley, the same could be said for each of Valley's other owners, with the result being that no party would control Valley." The SBA "will not accept an argument that a firm is not controlled by any party." Rather, "all concerns must be controlled by someone or some group at all times." The alternative, "to consider none of the minority stockholders as possessing the power to control the concern," would "ignore reality and leave the locus of power uncertain and unresolved."

OHA concluded that the SBA Area Office had properly applied the minority shareholder presumption, and denied GCR's size appeal.

In discussing the SBA's affiliation rules on *SmallGovCon*, I've often mentioned that some of the rules are intuitive (e.g., if an individual own 100% of two companies, they are affiliated), whereas others are not. And of course, it's the "not intuitive" affiliation rules that sometimes trip up even sophisticated contractors.

In my view, the minority shareholder presumption falls squarely into the "not intuitive" camp. A company like GCR cannot be faulted for assuming that its 4.16% minority ownership interest

benefits the government, too," VisibleThread said. "Specifically, the law would help federal government increase revenues and avoid unnecessary costs. Clear writing helps government agencies accomplish two goals: Improve engagement and compliance: essentially, when more people understand what you want them to do they are more likely to do it."

A broader study of agency-selected documents of all types is released regularly by the nonprofit Center for Plain Language, which has tended to show more agencies improving.

*Article posted courtesy of:
Charles S. Clark*

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Did you know that the Southern Alleghenies PTAC has [Twitter](#) and [LinkedIn](#) feeds? Do you want to stay up-to-date on the breaking issues related to government contracting as they happen? We regularly post on interesting and important issues like disadvantaged or small business topics, contract compliance, state and local contracting, larger trends, and breaking contracting news. If you want to stay ahead on what is going on in the contracting world, follow us on [Twitter](#) and/or [LinkedIn](#) today!



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did not establish control or affiliation. Unfortunately for GCR, that assumption proved to be incorrect. For others who might be in a similar boat, the *Government Contracting Resources* case offers an opportunity to consider whether an affiliation problem exists-and if so, take steps to address it before the issue arises in the context of a size protest.

*Article posted courtesy of:
Steven Koprince*

SBA Finalizes New Business Size Standards

Beginning in February, the federal definition of what qualifies as a small business will change, the Small Business Administration announced on Thursday.

Two final rules were published this week in the *Federal Register* for measuring the number of employees, along with final approval for an earlier rule addressing monetary worth of for-profit entities to determine eligibility for small business loans and federal contract set-asides.

As part of its comprehensive size standards review required by the 2010 Small Business Jobs Act, SBA evaluated employee-based size standards for 364 industries in three manufacturing sectors of the North American Industry Classification System, along with 57 wholesale and retail trade industries not in the classification system.

"The new size standards will enable nearly 1,650 more businesses in those industries to obtain or retain small business status; will give federal agencies a larger pool of small businesses from which to choose for their procurement programs; and will make more small businesses eligible for SBA's loan programs," SBA said in a release.

In the first final rule, SBA released size standards for 209 industries, raising, for example, the refining capacity component of the Petroleum Refiners size standard to 200,000 barrels per calendar day total capacity for businesses that are primarily engaged in petroleum refining.

In the second final rule, SBA increased the employee-based size standards for 30 industries and three exceptions and decreased them for three industries that are not in the classification system. In one area that prompted controversy during the comment period, SBA added a requirement that the supply (i.e., computer hardware and software) component of small business set-aside Information Technology Value Added Resellers contracts comply with the nonmanufacturing performance requirements. Abandoning a proposal to eliminate an exception for such groups, the final rule maintains the previous 150-employee size standard for such resellers to qualify as small businesses.

On the monetary side, the new rules finalized an interim rule in effect since June 2014 that adjusted for inflation (set at 8.73 percent) the monetary criteria gauging a business's size based on receipts, assets, net worth and income.

Quick Links

[The PTAC at SAP&DC](#)

[PA Department of General Services](#)

[PA Small Business Procurement Initiative](#)

[PA Supplier Portal](#)

[PA eMarketplace](#)

[System for Award Management \(SAM\)](#)

[FedBizOpps](#)

[Small Business Administration / Contracting](#)

"SBA estimates that more than 8,400 additional businesses will gain small business status under the adjusted size standards and become eligible for SBA's financial and federal government procurement programs," the agency said. "These changes can possibly lead to \$150 million to \$200 million in additional federal contracts and 80 additional loans, totaling about \$30 million, to small businesses."

It advised businesses whose status may have changed to recertify themselves on the System for Award Management (SAM).

The Small Business Act, the agency explained on its website, "states that unless specifically authorized by statute, no other federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard meets certain criteria and is approved by the administrator for SBA."

Article posted courtesy of Charles S. Clark

About Us

The PTAC at SAP&DC is an economic development entity that bridges the gap between supplier and buyer in the government marketplace. The PTAC stands ready to support businesses in the Alleghenies region in their pursuit to secure contracts with local, state and/or federal government agencies nationwide by:

- Identifying niche government markets and specific contract opportunities
- Assisting with bid and proposal preparation
- Preparing the required vendor registrations
- Navigating your company through the requirements and procedures of government contracting
- Enhancing competition by obtaining applicable socio-economic certifications
- Providing guidance to ensure successful post-award contract performance

Due to the generous support of our Commonwealth and Federal funding partners, services provided by the PTAC are free of charge.

Whether you are an experienced contractor or new to the government marketplace, the PTAC will provide one-on-one counseling utilizing the following program resources to increase your share of contact awards.

PTAC Resources

- Electronic Bid Matching for products and services

- Military/Commercial specifications and standards
- Past procurement information and pricing histories
- State and Federal regulations guidance
- Professional training and outreach events
- Quality assurance and packaging guidance

Contact us today at [The PTAC at SAP&DC](#) to get started!



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SAP&DC, 3 Sheraton Drive, Altoona, PA 16601

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