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To: NECA Boston Membership
From: Katie M. McDonough, Esq.
Re: Corporate Transparency Act ("CTA")
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There is a new federal regime of which all chapter members should be aware, both with respect to their electrical contracting businesses and with respect to personal investments held in corporations, limited liability companies, or even (potentially) trusts.

Beginning January 1, 2024, the Corporate Transparency Act ("CTA") requires certain companies ("Reporting Companies") to disclose their beneficial ownership information ("BOI") in reports filed through the BOI E-Filing System.

The BOI E-Filing System is administered by the Financial Crimes Enforcement Network ("FinCEN"), which is a bureau of the U.S. Treasury. The stated goal of the CTA includes to minimizing money laundering and other illegal activities.

CAUTION: Reporting Companies that do not timely file BOI reports can face a $500 per day civil penalty and be subject to criminal penalties of $10,000 and 2 years imprisonment for willful noncompliance.

Is your contracting business a "Reporting Company"?

"Reporting Companies" under the CTA include the following, unless otherwise exempt:

- U.S. limited liability companies (LLCs)
- U.S. corporations
- Other entities (such as statutory trusts) created by filing a document with a Secretary of State or similar office in a U.S. State or tribal nation (a "U.S. Jurisdiction")
- Foreign companies that have registered to do business in a U.S. Jurisdiction by filing a document with its Secretary of State

This means that any LLC, *even one that simply holds a vacation home*, could be a Reporting Company and, as such, must file a BOI report with FinCEN.

What entities are "exempt" from filing BOI reports?

There are 23 exemptions to the definition of "Reporting Company", all of which are detailed in the attached Reporting Company Checklist. The exemption that will most likely apply to NECA contractors is the "large operating company" exemption, which applies to an entity that:

(i) employs more than 20 full-time US employees,
(ii) has a physical US office, **AND**
(iii) reported more than $5M in gross US-source receipt/sales for the previous year.

CAUTION: If you are a contractor who may qualify for this exemption, you should consult with your accountant and corporate counsel. Do not assume you are permitted to aggregate across entities; rather, discuss with your advisors and proceed carefully.

What do Reporting Companies need to report to FinCEN?

Reporting Companies must file the following information:

- the **Reporting Company's** name, address, U.S. Jurisdiction, and tax identification number,
- the name, date of birth, address, and a scanned passport or driver's license of **all Beneficial Owners**, **AND**
- unless the Reporting Company was formed before January 1, 2024, the name, date of birth, address, and a scanned passport or driver's license of **Company Applicants**

Note: Contractors who have multiple entitles may find it more convenient to get a registration ID number by registering their BOI.

What is a Beneficial Owner?

"Beneficial Owners" under the CTA are individuals (including trustees) who either:

(i) own or control, directly or indirectly, 25% of the Reporting Company's ownership interests **OR**
(ii) exercise substantial control over the Company.

CAUTION: Beneficial owners may include individuals who possess no actual ownership interest the Company.

The statute defines "Beneficial Owners" broadly to include individuals who:

- are senior officers (President, CEO, CFO, COO, General Counsel, or equivalent roles),
- control the appointment or removal of any senior officer or a majority of the Board,
- have substantial influence over important decisions, **OR**
- have "any other form of substantial control over the Reporting Company."

The beneficial ownership definition "looks through" intermediate entities (*e.g.*, holding companies and trusts), and it likewise looks through nominees and agents. The goal is to identify **individuals**, so putting business assets into a trust or naming someone else as an officer will not necessarily shield a contractor from having to file his or her personal BOI with FinCEN.

What is a Company Applicant?

A "Company Applicant" is the person who actually files the paperwork to create and register the Reporting Company. There could be two Company Applicants. For instance, often, the Company Applicant is your corporate lawyer and his or her paralegal who created an entity for you.

When is the BOI Filing due?

Initial BOI deadlines depend on when Reporting Companies were created.

- **Reporting Companies created before 2024**: make an initial BOI filing by December 31, 2024 (no need to include Company Applicants).
- **Reporting Companies created in 2024**: file within 90 days of creation/registration
- **Report Companies created after 2024**: file within 30 days of creation/registration.

If BOI changes, must contractors file new reports with FinCEN?

Yes. Changes to BOI require an updated BOI filing within 30 days of the change. For instance, if your business has a Beneficial Owner, such as a CFO, who relocates, then the Reporting Company must file the CFO's new address with FinCEN.

What if there is an error in a BOI Filing?

Reporting Companies may make corrections to any BOI filing within 30 days after the filing.

Summary

The CTA is an onerous new requirement that will impact many contractors with respect to their personal and business assets. Understanding the law is essential because there are penalties up to and including criminal repercussions for noncompliance. Consult your corporate counsel and work with your accountants to ensure all filings are timely made.

Questions?

If you have any questions about these new reporting rules, please review our more detailed summary online. FinCEN also has a Small Entity Compliance Guide and frequently asked questions available to help guide you through the reporting requirements. Contact kmcdonough@hinckleyallen.com for further information.

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