



Employment Training Panel

# Memorandum

To: ETP Policy Committee  
Gretchen Newsom, Chairperson  
Janice Roberts, Member  
Rick Smiles, Member

Date: 02/27/2020

From: Michael A. Cable, Legal Counsel

Subject: ETP Policy Committee Meeting Agenda Item 3.e.  
Report to Policy Committee Re: Affiliates

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“Affiliate” has been generally defined as “another business that has a commercial relationship with the Single Employer, including a parent or subsidiary. AAU will verify the commercial relationship as part of determining eligibility for the Single Employer.” (See ETP Pilot Guidelines for: Unity of Enterprise, Eligibility Determinations, February 21, 2014; p. 4).

“Affiliates” and “Unity of Enterprise” are terms of art that are used in eligibility; which were thoroughly addressed and adopted by Motion by the Panel on February 21, 2014. (See ETP Meeting Minutes, February 21, 2014; pp. 7-10.) Although the intent is to ultimately resolve any issues that may arise with the use of “Affiliates” and/or “Unity of Enterprise” within the context of eligibility, best practices, and alike, the focus of today’s discussion is to obtain an answer to the following question:

**Should ETP have a rule to deny a particular applicant on the basis that the applicant already possesses a financial interest or benefit in another contract?**

This is the “too many eggs in one basket” argument that Panel Members, Stakeholders, and Contractors regularly make when they think or anticipate that – although two applicant contractors are legally separate and distinct entities able to hold their own ETP Contract – ETP should nonetheless have a rule that denies one applicant; or limits one applicant; or determines that both applicants will be collectively subject to one cap; et cetera; due to an underlying “relationship” or “closeness of enterprise or ownership” between the two applicant contractors.

If yes, then:

- What “relationship” or “closeness of enterprise or ownership” should apply? Something formal like a subsidiary or division? If not, then what relationship(s) should trigger this rule?
- If based upon common ownership between two separate and distinct entities, then what level of ownership should trigger this rule? Corporations? Limited liability companies?
- What new questions should be added to the application and eligibility process – and disclosures made by applicants – in order for ETP to make this new determination?