

**SIZE RECERTIFICATION REGULATION FOR
LONG-TERM CONTRACTS
QUESTIONS AND ANSWERS**

When is small business size status usually determined for a contract?

Historically, small business size status has been determined on the date firms submit their initial priced offers against solicitations for federal contracts. In the past, characterization of firms as “small” lasted for the duration of contracts. The U.S. Small Business Administration (SBA) is issuing a new regulation addressing longer-term contracts (i.e., contracts of more than five year’s duration) that continues initial size certification for a maximum of five years, and provides for subsequent “recertification” periodically thereafter.

Why is SBA issuing this size recertification regulation?

The SBA is issuing a size recertification regulation to better ensure that federal agencies receive credit for making contract awards to small businesses on long-term contracts *only so long as the firms that receive such contracts remain, in fact, “small.”* This will make federal contract reporting more accurate. More importantly, it will increase the opportunities for small businesses.

How will the size recertification regulation increase federal contract awards to small businesses?

Each year, by law, SBA establishes goals for each federal agency to award a percentage of its contracts to small businesses. Contracts generally span a number of years, including “base” and “option” periods. Before this new regulation, if an option was executed on a contract that was originally awarded to a small firm, and the firm subsequently grew to be other than small, the agency would still receive credit for contracting with a small business. Under this regulation, once a firm outgrows the small business size standard that applies to the contract, the contracting agency will no longer receive credit for the contract. This will encourage agencies to work harder to make opportunities available to small businesses, in order to achieve their small business contracting goals.

How will the size recertification regulation work?

The new regulation requires several things. For *all contracts, regardless of their duration*, small businesses must recertify their size status if they are merged, are acquired by, or acquire other business, or if a contract is novated.

For long-term contracts (over five years' duration) small businesses must recertify their size status at the end of the first five years of the contract, and before execution of every contract option after that. Also, orders against contracts must contain the small business size classification that appears in the contract, and the contractor must meet the small business size standard in order for the agency to receive small business credit.

When small businesses can no longer certify their small business size status, regardless of contract length, agencies can no longer count awards toward small business goals. When size status changes occur, agencies and contractors must revise records in all applicable federal contract databases.

Does the size recertification regulation affect contract terms?

The effects of the new regulation fall primarily upon federal agencies, preventing them from receiving credit for awards to small businesses, if the contract recipients are no longer small. The regulation does not affect the terms and conditions of contracts.

Does the size recertification regulation require termination of contracts to firms that are no longer small?

No, the regulation does not require termination of existing contract with firms that can no longer certify that they are small. However, in these cases, contracting agencies can no longer claim small business credit for awards under contracts with such firms.

Why is the effective date of the recertification regulation June 30, 2007?

The new regulation provides for an implementation period. This time is necessary to allow the government to modify the official contract award database, the federal Procurement Data System-Next Generation (FPDS-NG), to capture changes in small business size status. It will also permit contracting agencies to modify "back office" contract writing and reporting systems that feed FPDS-NG. Finally, it will allow the government time to revise the Federal Acquisition Regulations (FAR).

Why is recertification required every five years, and not at some other shorter interval?

Based on the analysis of comments received, five years was a reasonable period of time taking into consideration the operational issues and costs for small businesses and meeting the needs of the agencies to fulfill their missions. For example, many requests for proposals involve a small business incurring large expenses to respond.

The five-year recertification requirement for long-term contracts parallels the small

business size certification cycle for short-term contracts. That is, short-term contracts are typically of five years' duration – a one-year base year and four one-year options. Firms certify small business status at the time of bid submission, and recertify such status during the ensuing five-year period only if their size status changes because they are merged; are acquired by or acquire other businesses; or if contracts are novated.

Long-term contracts are of more than five years' duration, and under the new regulation, firms will certify small business size status at time of bid submission, and will recertify at the end of the first five years of the contract, at any time that options are executed thereafter, and at any time their size status changes because they are merged; are acquired by or acquire other businesses; or if contracts are novated.

What happens if a small business is awarded a contract and in the same fiscal year it is merged, acquired by or acquires another business, or if the contract is novated and the business becomes other than small?

The business would be considered small for that year but for any other action involving that contract or a new contract, the business would be considered other than small.