



# Small Business Size Recertification

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## What were the Old Rules for Small Business Size Certification?

- For prime contracting purposes, size was established when a concern submitted a written self-certification that it was small to the procuring activity as part of its initial offer which includes price. [13CFR121.404\(a\)](#)
- A concern that qualified as small for the award of a contract, stayed small for the life of the contract. [13CFR121.404\(g\)](#)



## Old Rules (cont'd)

- Where a concern grows to be other than small (large) during the life of the contract, the procuring agency may still exercise options and count the option award as an award to a small business. [13CFR121.404\(g\)](#)
- When a novation or change-of-name agreement has been executed pursuant to FAR Subpart 42.12, the new entity must submit a written self-certification that it is small to the procuring agency in order for the agency to count future award options, or orders issued pursuant to the contract, towards its small business goals. [13CFR121.404\(i\)](#)



# What are the New Recertification Rules?

- New rules were written as exceptions to 13 CFR 121.404(g).
- The effective date was June 30, 2007 and was applied to both new and existing solicitations and contracts.
- The new rules do not impose any recertification requirement at the subcontractor level.



## New Recertification Rules (cont'd)

- The new rules require size recertification for:
  - Contract novations
  - Mergers and acquisitions
  - Long term contracts



## How the New Rules Affect Novated Contracts?

- The new rule on contract novation applies to all contracts, not just long term contracts.
- A contractor must certify within 30 days of an approved contract novation.
- If the contractor cannot certify as small, the procuring agency can not count future options or task orders against its small business goals.



# How the New Rules Affect Mergers and Acquisitions?

- The new rule on mergers & acquisitions applies to all contracts, not just long term contracts.
- A contractor must recertify within 30 days of a merger or acquisition transaction becoming final.
- If the contractor cannot certify as small, the procuring agency can not count future options or task orders against its small business goals; **and**
- All applicable Federal contract databases must be immediately revised to reflect the new size status.



# What are Long Term Contracts?

- Long term contracts are all contracts that exceed 5 years in length including options:
  - Single award & multiple award contracts issued by an individual agency;
  - GSA & other Multiple Award Schedules (MAS);
  - Multi-agency contracts (MAC);
  - Government-wide Acquisition Contracts (GWAC).





# What are the New Size Recertification Rules for Long Term Contracts?

- Contractors will be required to recertify their small business size status prior to the end of the 5<sup>th</sup> year of performance & then prior to each option thereafter. The contracting officer must request recertification:
  - no more than 120 days prior to the end of the fifth year of the contract, and
  - no more than 120 days prior to exercising any option thereafter



## Rules for Long Term Contracts (cont'd)

- The contracting officer's request for size recertification must include the NAICS code initially used for contract award, but use the size standard for that code in effect at the time of recertification.
- If the contractor cannot certify as small, the procuring agency can not count future options or orders against its small business goals.



## Rules for Long Term Contracts (cont'd)

- A contractor that was previously certified as a large business (either at contract award or on a previous option) may recertify as small at the exercise of a subsequent option, if it then meets the applicable size standard.



# How do the New Rules Affect Task Orders Under IDIQ Contracts?

- For each task order, the contracting officer must assign a NAICS code and size standard that corresponds to a code and size standard assigned to the underlying contract;
- A concern will be considered small for that task order only if it certified itself as small at the time of IDIQ contract award for the NAICS code assigned to the task order or for another code assigned to the IDIQ contract with a lower size standard.



# Task Orders Under IDIQ Contracts

## (cont'd)

- The contracting officer may require that concerns recertify as to size status in response to a solicitation for a task order. [LB&B Associates, Inc. v. U.S., 68 Fed. Cl. 765 \(Fed. Cl. 2005\)](#);
- Size status in the above situation will be determined as of the date the concern submits its self certification in response to the solicitation for the task order being competed.



# What are Points to Remember About Size Recertification?

- Recertification of size does not in any way change the terms and conditions of the existing contract.
- Performance of work (limitations on subcontracting), non-manufacturer rule, subcontracting plan and other requirements in effect at contract award remain in effect for the life of the contract.



## Points to Remember(cont'd)

- The basis of all small business programs is that the concern is a small business.
- If a concern cannot recertify as a small business, it can no longer be counted toward an agency's goals for any of the small business programs, e.g., SBSA, 8(a), SDB, WOSB, HUBZone, VOSB, or SDVOSB.



## Points to Remember(cont'd)

- The new rules do not prohibit a contracting officer from exercising an option when a concern cannot recertify as small, but they also does not require a contracting officer to do so.





## What are the Rules for Size Protests on Long Term Contracts?

- Protests must be received by the contracting officer by the close of the 5<sup>th</sup> business day after notice of size recertification for an option period.
- Notices may be made orally, in writing, or by electronic posting.
- The KO is not required to terminate a contract where a firm is found to be large as a result of an option recertification protest.



# What are the Rules for Size Protests on Task Orders?

- Protests must be received by the contracting officer by the close of the 5<sup>th</sup> business day after notice of the identity of the prospective awardee or award.
- Notices may be made orally, in writing, or by electronic posting.
- If the concern is found not to be small, it is not eligible for award of the task order.



# Where Can I Find SBA's Size Regulations?

- SBA's size regulations are found at 13 CFR 121.
- An Internet link to 13 CFR 121 is <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=a36d3e4c58b2bf21af702b97d814944e&rgn=div5&view=text&node=13:1.0.1.1.15&idno=13>