



News Release

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MYTH VS FACT: SBA and GOVERNMENT CONTRACTING

Myth: Large companies, including large, multinational corporations are taking away federal contracts specifically intended for small businesses.

Fact: Several things are happening here, but large businesses taking contracts that have been set aside for small business isn't a real factor. A very few contracts are awarded to firms whose size is challenged – not household names but firms at the boundaries of small business status. SBA has, however, proposed new regulations to keep such contracts from being counted as small business contracts. What is happening is small companies that get long-term contracts are profiting by those contracts, and growing into large businesses. Also, large companies are acquiring small companies that hold long-term federal contracts, which can last for up to 20 years. In fact, many large, multinational corporations have acquisition strategies based on acquiring small companies with long-term federal contracts. In addition, some contracting agencies enter their contract data into the federal database incorrectly as awards to small businesses.

Myth: Then why are these large, multinational corporations listed in the GSA's database as holding small business contracts?

Fact: Historically, size status – whether a company is large or small – has been determined at the time of the initial offer on the contract and is retained over the life of the contract. However, federal agencies are increasingly using long-term contracts that, with the exercise of contract options, can extend to 20 years. During that 20-year period, some of these companies become large because of their success, and some are acquired by bigger companies. The problem arises because up until now, under federal rules, federal agencies have been allowed to continue counting those as small business contracts for the life of the contract, even after they have become subsidiaries of larger firms.

Myth: The SBA hasn't done anything to stop the misrepresentation of these as small business contracts, and has made it easier for large businesses to misrepresent themselves.

Fact: The SBA has taken very strong steps to correct this problem, and make it difficult for companies to misrepresent themselves. Most importantly, SBA will implement a recertification rule in June requiring companies with long-term contracts to recertify their small business size status at the end of the first five years of a contract and every time an option is exercised, thereafter. In addition, whenever a small business is purchased by or merges with another business, it must recertify its size status for all its contracts.

As of June, the recertification policy will require those contracts to be reported as contracts held by large companies if the companies holding them have grown beyond the size standards for small businesses or been acquired by a large company. The federal procurement regulations will also be revised to reflect these requirements.

Other steps taken by SBA include: hiring more contracting staff to help procurement officers identify small business contracting opportunities, implementing a Small Business Procurement Scorecard to monitor federal agencies' small business contracting performance and grade them on it, and requiring federal agencies to review discrepancies in their contracting statistics.

Myth: The new “five-year” recertification policy allows federal agencies to report billions of dollars earmarked for small businesses to large, multinational corporations until 2012.

Fact: The new recertification policy prohibits a small business that merges or is acquired by a large business from claiming small business status for future work on an existing contract from that point on. The policy also limits how long a small business that grows large may be reported as small to not more than five years. For current long-term contracts, a small business must recertify its small business status before it is awarded an option. Calling it a “five year” policy is also a misnomer – in actual practice, contract options are often annual, which triggers annual recertification.

The new recertification policy applies to all current and future long-term contracts. That means whenever any of the events that trigger the requirement for recertification occur – exercise of a contract option, merger or acquisition, or the end of the first five years of the contract – the small business must recertify itself as small at that point, or concede it has become a large business.

Because it applies to all current contracts, recertification can be required as soon as the law goes into effect, when one of the triggering events occurs, whether it is hitting the five-year mark or exercise of an option or merger or acquisition.

Myth: There have been no penalties or consequences for large businesses getting small business contracts.

Fact: A business that bids on a small business contract will be denied the contract if the SBA determines that it is not a small business, and the contracting agency determines that termination is necessary. SBA is proposing strengthening these rules by staying awards until size status is determined. If a business intentionally misrepresents its small business status, it is subject to fines and its owners to imprisonment under Section 16(d) of the Small Business Act. Private businesses may also file civil suits under the False Claims Act, and may challenge the size claims of competing companies that win contracts.

Myth: Small businesses are forced to compete with large businesses under the new recertification policy.

Fact: On contracts set aside for small business, a business must be small at the time it submits its bid. The new recertification policy actually protects small businesses from competing against large businesses by requiring a small business that has merged or been acquired by a large business to recertify its small business status.

Myth: SBA refuses to release names of small businesses awarded federal contracts.

Fact: Federal contract award data is readily available to the general public through the Federal Procurement Data System-Next Generation. Any individual may request a special report through the General Services Administration, which operates the database, if he or she has difficulty in obtaining data.

Myth: Since 2002, 14 federal investigations have found billions of dollars have been diverted from legitimate small businesses to Fortune 1000 companies and subsidiaries across the country.

Fact: Almost without exception, these reports raise issues regarding accurate reporting of contract dollars awarded originally to small businesses on contracts that last many years. Although some report the very few occasions when large businesses have won contracts set aside for small businesses, they find almost unanimously that in a federal acquisition environment encompassing more than two million contracting actions each year, this is a very small part of the problem, mostly due to small firms that grew beyond size standards unwittingly. None of them, for example, suggest that large, multinational corporations have competed against small businesses and won contracts set aside for small businesses.

As these reports clearly point out, the findings pertain to contracts awarded to small businesses that later became large through their own success or through a merger with or acquisition by a large business during the performance of the contract. Because the business was small at time it received the contract, the federal government continued to report the contract as a small business contract.

Myth: SBA's recertification proposal is the same as the unpopular "grandfathering" plan proposed by SBA in 2004.

Fact: SBA never proposed any five-year "grandfathering" rule, and in any case, the issue was completely unrelated to the recertification rule that will be implemented this year on June 30. SBA's proposal in 2004 was a broad restructuring plan for its size standards, which included the idea that all size standards would be expressed in terms of the maximum number of employees a business could have and still be considered small. This proposal would have replaced a system in which size standards for some business sectors are defined by the number of employees and some by total revenues. No proposal for a "grandfathering" provision was ever made, although in response to concerns that some small businesses would lose their size status because of the changeover from revenues to employee numbers, SBA asked for comments whether it should consider proposing some unspecified time period to allow affected small businesses time to adjust. After a review of the comments on the entire restructuring issue, the project was dropped.

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