



News Release

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Myth/Fact: Is There a 5-Year Loophole in New SBA Contracting Rules?

Dateline: Washington, D.C.

Myth: The new “five-year” recertification policy will allow federal agencies to continue to report and take credit for billions of dollars of contract awards, earmarked for small businesses, that were made to large, multinational corporations until 2012.

Fact: There is no “five-year” loophole.

Critics of the new policy incorrectly assume that contracts initially awarded to small businesses that were subsequently purchased by large firms will not be recertified for five years. In fact, if a large firm acquires a small company with existing long-term (five year or more) contracts, those contractors will be recertified and the contracts removed from the small business database within 30 days. This rule also applies to mergers and acquisitions that occurred before the June 30, 2007, implementation of the new rules. If a large firm acquires a small firm with existing short-term contracts, the contracts will be removed from the database when the next option is exercised, within a year in the vast majority of cases.

Large Firms Acquiring Long-Term Small Business Contracts: contracts are immediately reclassified as no longer small.

The new recertification policy prohibits government agencies from claiming small business status for contracts initially awarded to small businesses that have since been acquired by a large business, regardless of when that acquisition or merger occurred. The new recertification policy applies to *all existing* and future long-term (five years or longer) contracts. For example, if a large firm purchased a small firm with a 20-year federal government contract last year, the contracting government agency can no longer count that contract as small.

Large Firms Acquiring Short-Term Small Business Contracts: contracts are reclassified within a year as no longer small.

The new recertification policy also applies to existing short-term contracts and requires small businesses to recertify their size status for acquisition, merger or novation. Because more than five million actions are recorded in the federal government’s contracting database each year, as a practical measure contracting officers are being allowed to review short-term contracts as they are renewed annually. Any acquisition of a small firm by a large company after June 30th will cause any small business contracts to be immediately recertified as no longer small. A tiny fraction of short-term contracts may have option periods longer than one year. SBA will work with other federal agencies on a case-by-case basis to identify and recertify these contracts.

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Small Businesses May Grow for Up to Five Years

The source of critics' confusion is that the new SBA rules allow small businesses that are not acquired by other companies to grow for up to five years before they have to recertify their size. This is common sense, as we want to reward small business success. To do otherwise would penalize firms that are still small, but would grow larger because they earned a federal contract. For current long-term contracts, a small business must recertify its small business status before it is awarded an option. As contract options are often annual, in actual practice the "five year policy" will frequently trigger annual recertification.

In all of the above situations, once the size is recertified the contract continues, but the federal government can no longer count it as a "small business" contract. Under these rules, large businesses credited with small contracts will no longer be counted as small. Nearly all the remaining large businesses will be scrubbed from the database within a year. As a result, federal agencies will need to increase efforts to identify and contract with new small businesses to meet their small business contracting goals – 23 percent as directed by Congress.

Because the General Services Administration needs some time to code the policy changes into its Federal Procurement Database System, which tracks the federal government's contracting, the size status changes made over the next few months will not appear in that database until November.

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