

# CONTRACT MANAGEMENT

[www.ncmahq.org](http://www.ncmahq.org)

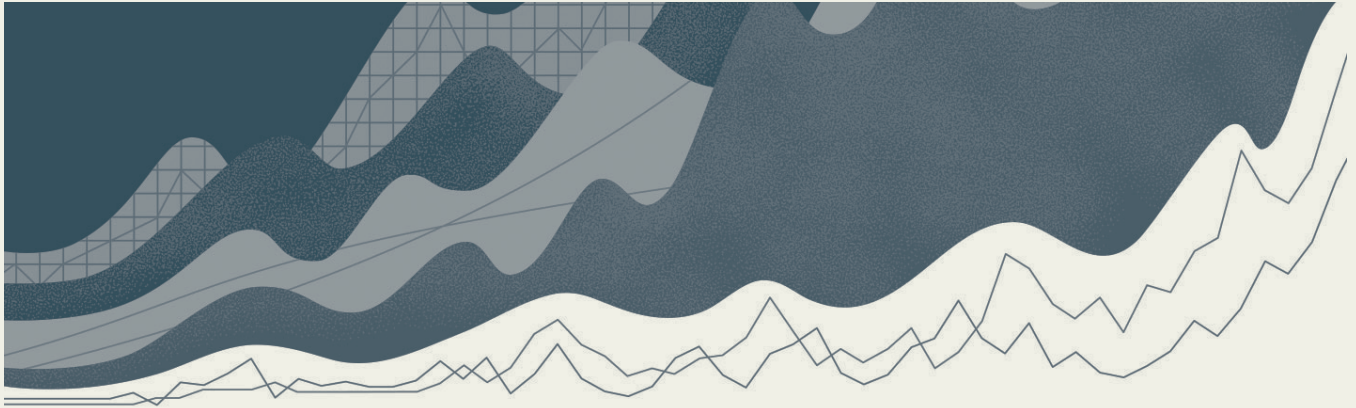
## Agility Through Uncertainty



**NCMA**  
NATIONAL CONTRACT MANAGEMENT ASSOCIATION

CONNECTING TO  
CREATE WHAT'S NEXT

## COUNSEL COMMENTARY



# SBA Revamps Size Recertification Rules

A recent SBA rule change impacts small business eligibility for orders under multiple-award contracts.

BY STEPHEN L. BACON

In December 2024, the Small Business Administration (SBA) published a Final Rule that sought to clarify the timing and effect of small business size recertifications.<sup>1</sup> These changes will have especially significant consequences for many small businesses that compete for task and delivery orders under multiple award contracts (MACs).

During the past decade, the government's use of MACs has expanded as agencies increasingly rely on "best-in-class" vehicles to acquire goods and services, particularly information technology services. At the same time, the SBA has grappled with how to determine a small business concern's eligibility to compete for orders under a MAC after it becomes large.

For many years, a contractor that was certified as small for purposes of the MAC award would generally remain eligible for all orders under that MAC unless the contracting officer requested a new size certification in connection with a specific order. In 2020, the SBA changed this paradigm by making the requirement to recertify at the order level mandatory for "unrestricted" MACs.<sup>2</sup>

But the rule change in 2020 did not require contractors to recertify their size status at the order level for MACs that were set aside or reserved for small businesses. As a result, a company that held a set-aside MAC could generally continue to compete for orders under that vehicle, including all option years, even

if it outgrew the size standard during the life of the MAC.

The latest evolution of SBA policy includes important modifications to this rule. Specifically, under the new rule, a set-aside MAC holder will be ineligible to compete for orders when they make a "disqualifying recertification" due to a merger or acquisition or at the five-year mark of a long-term contract.

These changes are likely to have profound implications for small businesses by restricting their eligibility for future business opportunities under set-aside MACs. It is critical for small businesses to understand the consequences of this rule and its potential impact on their ability to compete for task and delivery orders going forward.

### Recertification Triggers and Effect

In general, an offeror's size status for an order issued under a set-aside or reserved MAC is determined "as of the date a business concern submits its initial offer, which includes price, for the set-aside or reserved multiple award contract, unless a contracting officer requests size recertification for a specific order."<sup>3</sup>

This means that, subject to certain exceptions, an offeror's size status for purposes of the set-aside or reserved MAC will generally "flow" to all orders issued under that vehicle.

The SBA established a new unified regulation, codified at 13 C.F.R. § 125.12, to specifically address the requirements

for recertification of size and status under all SBA programs. That regulation identifies three scenarios that trigger a requirement to recertify:

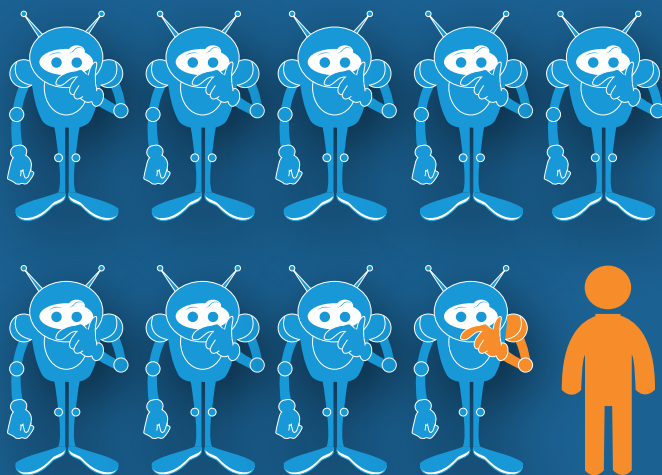
1. A business must recertify within 30 calendar days of a merger, acquisition, or sale that results in a change in controlling interest.<sup>4</sup>
2. For long-term contracts exceeding five years, businesses must recertify no more than 120 days prior to the end of the fifth year and again before exercising any subsequent option.<sup>5</sup>
3. Recertification is required when a contracting officer explicitly requests it for a specific order or agreement.<sup>6</sup>

Although these triggering events are not new, 13 C.F.R. § 125.12 changes the effect of a recertification as "other than small" in certain circumstances. The consequences of a disqualifying recertification are now more severe, especially for triggering events (1) and (2) listed previously.

Specifically, if a business submits a disqualifying recertification due to a merger, acquisition, or sale, or at the five-year mark of a long-term contract, it becomes ineligible to compete for any future orders under a set-aside or reserved MAC.<sup>7</sup> Moreover, the company is not eligible to receive additional options.<sup>8</sup>

The Final Rule includes an important exception that applies to triggering event (1) where the merger, acquisition,

COBBLESTONE  
software



With CobbleStone Contract Insight, managing contracts just got easier. See how VISDOM® AI can positively transform your contract management.

Visit [CobbleStoneSoftware.com/Demo](https://CobbleStoneSoftware.com/Demo) or Call (866) 330-0056.

95%

of contract managers  
are open to utilizing AI  
for their processes.

But,

23% say that their  
current system is too  
complicated.





## COUNSEL COMMENTARY (CONT.)

or sale is between two eligible small businesses. In that scenario, the resulting entity remains eligible for set-aside orders even if it is large under the applicable size standard.<sup>9</sup> However, the agency cannot count these orders towards its small business goals.<sup>10</sup>

A disqualifying recertification in response to a contracting officer's request in connection with a specific order – triggering event (3) listed earlier – has a different, more limited effect. When this triggering event occurs, the contractor cannot compete for that specific order but it remains eligible for future orders under the MAC so long as the ordering contracting officer does request recertification.<sup>11</sup>

**Pending Offers**

The SBA also clarified its interpretation of the so-called “180-day” rule, which has been the subject of substantial confusion and litigation. That rule generally provides that a business is ineligible for a set-aside award if a merger, acquisition, or sale occurs within 180 days of the offer but prior to award.<sup>12</sup> But if the merger, acquisition, or sale occurs after the 180-day mark, the company is eligible for award.<sup>13</sup>

Several decisions interpreted the prior iteration of the rule to mean that a business could recertify as other than small after a merger, acquisition, or sale, but remain eligible for a set-aside order. The only consequence of the disqualifying

recertification was that the order would not count towards the agency's small business goals.<sup>14</sup> The SBA has clarified that this was not the result it intended.<sup>15</sup>

Under the new rule, any disqualifying recertification due to a merger, acquisition, or sale prior to award renders the resulting entity ineligible for the order regardless of when the proposal was submitted.<sup>16</sup> As a result, a disqualifying recertification also means that the new entity is ineligible for a pending set-aside MAC award because it would not be eligible to compete for any orders under that vehicle.<sup>17</sup> The 180-day rule is now only relevant to determining a firm's eligibility for a single-award set-aside contract after a merger, acquisition, or sale.

**One-Year Grace Period**

The SBA recognized that these changes will significantly impact the small business contracting community. As a result, the SBA included a one-year grace period before the consequences of certain disqualifying recertifications take effect.

The Final Rule is generally effective on January 16, 2025.<sup>18</sup> However, it delays the effective date for two aspects of the changed rules.

First, any firm that submits a disqualifying recertification due to a merger, acquisition, or sale occurring before January 17, 2026, remains eligible for orders under set-aside MACs.<sup>19</sup> For companies looking to buy or sell, this creates an incentive to get a deal done this year to take advantage of the grace period.

Second, the Final Rule also provides that a firm that submits a disqualifying recertification at the five-year mark of a long-term contract remains eligible for options exercised before January 17, 2026.<sup>20</sup>



FOR GOVERNMENT | BY GOVERNMENT  
A FEDERAL IT ACQUISITION PROGRAM

## Streamlining FEDERAL IT Acquisitions

Best in Class GWACs

**CIO-SP3**

IT SERVICES/SOLUTIONS

**CIO-SP3**

IT SERVICES/SOLUTIONS

**CIO-CS**

IT COMMODITIES/SOLUTIONS

1.888.773.6542 | [nitaac.nih.gov](https://nitaac.nih.gov) | [NITAACsupport@nih.gov](mailto:NITAACsupport@nih.gov)

## New Size Protest Mechanism

The existing size protest regulations did not specifically authorize an interested small business to protest a size recertification submitted by another offeror. As a consequence, a company had no ability to challenge the eligibility of a competitor that should have submitted a disqualifying recertification.

After examining the current rules, the SBA concluded that “other contract holders should have the ability to question a size recertification.”<sup>21</sup> Thus, under the new rule, any contract holder on a MAC may file a size protest or a request for formal size determination concerning a recertification under the newly established 13 C.F.R. § 125.12.<sup>22</sup>

## Conclusion

The changes to size recertification represent a fundamental shift in how the SBA approaches ongoing eligibility for orders under MACs set aside or reserved for small businesses. The one-year grace period provides some time to adapt, but contractors should begin planning now for how these changes will impact their strategy going forward.

The SBA’s new rule will ultimately lower the valuation of many small businesses that depend on set-aside MAC orders for future growth. Understanding the new recertification requirements and planning accordingly will be essential for maintaining access to set-aside opportunities for as long as possible.

The Final Rule clarifies a confusing area of SBA regulations, but it also raises the stakes for businesses that become large through mergers, acquisitions, or growth during the life of a set-aside MAC. For these businesses, the days

of continued eligibility for set-aside orders after recertification are coming to an end. **CM**

**Stephen L. Bacon** is a shareholder in the Washington, D.C. office of the law firm Rogers Joseph O'Donnell, where he represents government contractors in bid protests, claims, terminations, investigations, and suspension and debarment proceedings. He frequently litigates cases at the Court of Federal Claims, the Government Accountability Office, the Boards of Contract Appeals, and the Small Business Administration's Office of Hearings and Appeals. He also provides advice and counsel to clients on a broad range of contractual and regulatory compliance issues that confront government contractors.

*The views expressed in this article are those of the author and do not necessarily reflect the views of Rogers Joseph O'Donnell or its clients. This article is for general information purposes and is not intended to be and should not be construed as legal advice.*

## ENDNOTES

- 1 89 Fed. Reg. 102448 (Dec. 17, 2024).
- 2 85 Fed. Reg. 66146, 66150-51 (Oct. 16, 2020).
- 3 13 C.F.R. § 121.404(c)(2).
- 4 13 C.F.R. § 125.12(a).
- 5 13 C.F.R. § 125.12(b).
- 6 13 C.F.R. § 125.12(c).
- 7 13 C.F.R. § 125.12(e)(2)(ii)(B)(1).
- 8 13 C.F.R. § 125.12(e)(2)(iii)(B).
- 9 13 C.F.R. § 125.12(e)(2)(ii)(B)(2).
- 10 Id.
- 11 13 C.F.R. § 125.12(e)(2)(i)(A).
- 12 13 C.F.R. § 125.12(e)(2)(i).
- 13 Id.
- 14 See, e.g., Size Appeal Odyssey Systems Consulting Group, Ltd., SBA No. SIZ-6135 (2021); Size Appeal of Saalex Corp. d/b/a Saalex Solutions, Inc., SBA No. SIZ-6274 at 11 (2024).
- 15 See 89 Fed. Reg. 68274, 68285 (Aug. 23, 2024).
- 16 13 C.F.R. § 125.12(e)(2)(i).
- 17 Id.
- 18 89 Fed. Reg. at 102448.
- 19 13 C.F.R. § 125.12(g)(i).
- 20 13 C.F.R. § 125.12(g)(ii).
- 21 89 Fed. Reg. at 102451.
- 22 13 C.F.R. § 121.1001(a)(11)-(12).



**Secure**

703.229.4200  
bd@bvti.com  
www.bvti.com

SBA  
SERVICE-DISABLED  
VETERAN-OWNED  
CERTIFIED

## Networks safeguard acquisitions - on-site or in the cloud

- Classified / unclassified source selection
- Custom built networks
- Information systems security
- Web-based applications
- Cloud migration
- Helpdesk support

**BVTI**  
Best Value Technology Inc

Cleared IT and contracting professionals  
send your resume to recruiting@bvti.com