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Federal Contractor's Guide to the SBA's October 2020 Final Rule –

Part I: Impacts on MAC Certification and Recertification

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Today's Agenda

- **Big Picture: Overview of the New SBA Final Rule**
- **Impact on Set-Aside MACs**
- **Impact on Unrestricted MACs**
- **Discussion of Practical Application for Federal Contractors (Large and Small)**
- **Preview: Upcoming Webinar Training Sessions**



Overview of the Final Rule (85 FR 66146)

SBA Final Rule: Consolidation of Mentor-Protégé Programs and Other Government Contracting Amendments

- Dated 16 October 2020
- Effective 16 November 2020 (Yesterday!)

Impacts Large and Small Business Contractors

- Requirements for certification and recertification (MAC and FSS)
- Changes to the 8(a) program
- Changes for small business and affiliation rules generally
- Joint venture update
- All small mentor-protégé program limitations and requirements



Expected Changes to Agency Procurement Practices

Amends regulations at:

- 13 C.F.R. 121.404(a) (When to determine size status)
- 13 C.F.R. 124.503(i) (8(a) BD program)
- 13 C.F.R. 125.18(d) (Service-disabled veteran-owned small businesses)
- 13 C.F.R. 127.504(c) (Women-owned small businesses)

The new rule impacts *when* an agency determines size and status.

Contractor certification and rectification of size and/or socioeconomic status **varies** depending on whether the procurement is a **set-aside MAC** or an **unrestricted MAC**



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Certification and Recertification: Set-Aside MACs

- Contractors certify size and/or status at time of offer
- Size and status “**Flow Down**” to each order for the life of the contract . . . **Except:**
 - In **Long-Term MACs** (5+ years), contractors must recertify size and/or status at the 5 year mark and every option thereafter
 - Contracting officer may request recertification for a specific order
- An agency may **set-aside a particular order** for a different type of size concern (i.e., socioeconomic designation)
 - Contractors must certify they meet status requirements at the time they submit the offer for the order



Certification and Recertification: Unrestricted MACs

- Size and status is irrelevant for award of unrestricted MACs
- Contractors **must certify** size and/or status if the agency **sets-aside an order** under the unrestricted MAC
- **Exception:** Contractors are not required to recertify if the MAC was awarded to a pool of small business concerns
- These rule changes do not apply to orders or BPAs under the FSS or GSA schedule contracts



Additional Certification Requirements and Clarifications on Existing Practices

- **Merger, Acquisition, Sale:** Contractors **must recertify** within 180 Days of Submitting an Offer
- Reliance on subcontractor self-certification (unless there is reason to doubt . . .)
- Tribal, Alaska Native Corporation (ANC), or a Community Development Corporation (CDC) certifications



Practical Applications

- Expect an uptick in MAC order protests
- Expect increased scrutiny on certifications and recertifications
- Big changes coming for contractors that exceed size standard during performance
- Increased certainty for large contractors' small business subcontracting plans



Practical Advice Moving Forward: Industry Perspective

- MAC Changes: know the rules and how your firm's size/status will play out for any given procurement strategy
- MPA Consolidation: will create greater visibility on the MP landscape and will impact client procurement strategies – LBs and SB should understand the program and impact on their market
- Develop a plan to participate in MP based on your business development strategy and target the right mentor

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Upcoming Webinars

The next installment in this series will be on **December 1, 2020** and we will be covering Joint Ventures and the All Small Mentor-Protégé Program: Limitations and Requirements. We are excited to announce that we will be joined by Audrey Mack, the Small Business Liaison Officer for Atkins.

Other remaining installments include:

- Changes for Small Business and Affiliation Rules Generally
- SBA 8(a) Program Update

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